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WILCOX & CO

No. 9242

United States
Circuit Court of Appeals

For the Ninth Circuit.

Vol 2190
1 rev 2191

WEST COAST LIFE INSURANCE COMPANY,
a corporation, PACIFIC NATIONAL BANK
OF SAN FRANCISCO, a national banking
association, et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT and ~~RE-~~
~~CONSTRUCTION FINANCE CORPORATION,~~

Appellees.

Transcript of Record

In Four Volumes

VOLUME I

Pages 1 to 266

Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

FILED

SEP 15 1939

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Washington, D. C. [1-a]

In the District Court of the United States for the
Southern District of California, Northern
Division.

In Bankruptcy No. 4818

In the Matter of

MERCED IRRIGATION DISTRICT,
Debtor.

CITATION ON APPEAL

United States of America—ss.

To the Merced Irrigation District, Petitioner in the
Above Entitled Proceeding, and to All Attor-
neys and Solicitors of Record of Said Party:

You are hereby cited and admonished to be and
appear at a session of the United States Circuit
Court of Appeals for the Ninth Circuit, to be held
at the City of San Francisco, in the State of Cali-
fornia, on the 29th day of April, 1939, pursuant to
the appeal duly obtained and filed in the office of
the Clerk of the above entitled court and in the
above entitled cause, in which said appeal the fol-
lowing persons are appellants: West Coast Life
Insurance Company, a corporation; Pacific Na-
tional Bank of San Francisco, a national banking
association; Mary E. Morris; R. D. Crowell; Belle
Crowell; Claire S. Strauss; Minnie E. Rigby as
Executrix, and Richard tum Suden as Executor, of
the Last Will of William A. Lieber, Alias, De-
ceased; Florence Moore; [2] American Trust Com-
pany as trustee under a certain agreement between

R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayston Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isa-

bella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, and in which said appeal the Merced Irrigation District is appellee, and you are required to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to [3] the parties in that behalf.

Witness, the Honorable Paul J. McCormick, United States District Judge of the Southern District of California, this 30th day of March, 1939, and of our Independence the 163rd.

PAUL J. McCORMICK

United States District Judge.

Service and receipt of a copy of the foregoing Citation on Appeal admitted this 5th day of April, 1939.

HUGH K. LANDRAM

C. RAY ROBINSON

DOWNEY, BRAND &

SEYMOUR

STEPHEN W. DOWNEY

Attorneys for Merced

Irrigation District, Appellees.

[Endorsed]: Filed April 10, 1939. [4]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California

County of Stanislaus—ss.

Esther Mortensen, being first duly sworn, deposes and says:

That she is a citizen of the United States; Resident of the County of Stanislaus; over the age of eighteen years and not a party to nor interested in the above entitled matter; that on the 25th day of April, 1939, she placed a full, true, and correct copy of the Citation on Appeal on file in this cause, in an envelope, duly sealed and deposited the same in the United States Post Office, at Turlock, California, with the postage thereon fully prepaid, addressed to Reconstruction Finance Corporation, Washington, D. C.; that there is a regular daily communication by mail between Turlock and Washington, D. C.

ESTHER MORTENSEN

Subscribed and sworn to before me this 25th day of April, 1939.

[Seal]

GILBERT MOODY

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Filed April 26, 1939. [6]

In the District Court of the United States, for the
Southern District of California, Northern
Division.

In Bankruptcy No. 4818

In Proceedings for Confirmation of a Plan of
Composition of Bond Indebtedness.

In the Matter of

MERCED IRRIGATION DISTRICT,
Debtor.

PETITION FOR CONFIRMATION OF A
PLAN OF COMPOSITION OF BOND
INDEBTEDNESS.

To the Honorable United States District Court, for
the Southern District of California, Northern
Division:

Merced Irrigation District, hereinafter styled
“Petitioner,” files this the petition of said District
for confirmation of a plan of composition of its
bond indebtedness and alleges:

I.

That petitioner is an irrigation district duly
formed, organized and existing in accordance with
and under and by virtue of the provisions of The
California Irrigation District Act of the State of
California. That said District comprises approxi-
mately one hundred eighty-nine thousand (189,000)
acres of land and is located wholly in the County of
Merced, in the Southern Judicial District of Cali-

fornia, Northern Division, and within [8] the jurisdiction of the above entitled Court. That said petitioner irrigation district is a taxing agency or instrumentality organized and created for the purpose of constructing, improving, maintaining and operating certain improvements and projects devoted chiefly to the improvement of the lands in said district for agricultural purposes, to-wit, the supplying of water for the irrigation of said lands and providing for the drainage of said lands where necessary. That by reason of the facts hereinabove and hereinafter alleged, petitioner is entitled to the relief offered by that certain Act of Congress of the United States entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, hereinafter referred to as the Federal Bankruptcy Act, as said Act has been amended and is now in effect and particularly Chapter X thereof as amended by Public No. 302 of the Seventy-fifth Congress, Chapter 657, First Session, approved August 16, 1937, hereinafter referred to as "Chapter X", and this petition is filed pursuant to the provisions thereof.

II.

That petitioner is unable to meet its debts as they mature. That it has been continuously in default on both the principal and interest maturing on its bond indebtedness since the 1st day of July, 1933; that the total amount now in default on said bond indebtedness is in excess of Five Million

Dollars (\$5,000,000.00) ; that petitioner has not been able and is not now able and will not be able to collect revenue from assessments on the lands within its boundaries and/or from tolls and charges fixed for the use of water and/or from the sale of water and power or otherwise or at all sufficient to meet its said obligations now due or as they mature. That by reason of the facts aforesaid [9] petitioner desires to effect a plan of composition of its outstanding bond indebtedness, which said bond indebtedness including the interest thereon is payable (a) from revenue derived from annual assessments levied against and constituting liens upon the lands within the boundaries of petitioner, or the Board of Directors of petitioner may in lieu (either in whole or in part) of levying assessments for said purpose, (b) apply income thereto derived by petitioner from the sale of water or power or both.

That said bond indebtedness of Merced Irrigation District which it is desired to readjust consists of three (3) issues of bonds aggregating the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), together with matured and unpaid interest thereon described as follows, to-wit:

(a) An issue of bonds designated as First Issue in the aggregate principal amount of Eleven Million Nine Hundred Forty Thousand Dollars (\$11,940,000.00) payable as follows:

1. Division First, all dated January 1, 1922, being in the aggregate principal amount

of Three Million Sixty Thousand Dollars (\$3,060,000.00) bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1934 to 1950 (both inclusive).

2. Division Second, all dated January 1, 1922, being in the aggregate principal amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, pay- [10] able semi-annually on the first day of January and the first day of July of each year, due serially from 1951 to 1953 (both inclusive).

3. Division Third, all dated January 1, 1922, being in the aggregate principal amount of One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1954 to 1955 (both inclusive).

4. Division Fourth, all dated January 1, 1922, being in the aggregate principal amount of Five Million Seven Hundred Sixty Thousand Dollars (\$5,760,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of

July of each year, due serially from 1956 to 1962 (both inclusive).

(b) Issue of bonds designated as Second Issue, all dated May 1, 1924, in the aggregate principal amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1937 to 1964 (both inclusive).

(c) An issue of bonds designated as Third Issue, all dated April 1, 1926, in the aggregate principal amount of One Million Dollars (\$1,000,000.00), bearing interest [11] at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1965 to 1966 (both inclusive).

That all of said bonds have been duly issued under the provisions of said "California Irrigation District Act" which said Act, together with the Act of the Legislature of the State of California, approved June 19, 1931, page 2263, as amended, provide for the method of levying assessments by petitioner upon the lands located therein for the purpose of paying the principal amounts of, and interest on said bonds and for other purposes; that

all of said bonds are in substantially the following form:

United States of America
State of California

Bond No.		Dollars
.....	Series No. ....	.....

Merced Irrigation District

..... Issue Division
-------------	----------------

The Merced Irrigation District of the County of Merced, State of California, an irrigation district duly organized and existing under and in pursuance of the laws of the State of California, is indebted to and promises to pay to the bearer hereof, for value received, the sum of..... on the 1st day of, with interest thereon from the date hereof until the maturity hereof at the rate of.....per annum, payable semi-annually on the first day of January and the first day of July of each year. Said principal sum and [12] interest are payable in gold coin of the United States of America at the office of the Treasurer of said district, the same being in the City of Merced, in the County of Merced, State of California, and said interest is payable only upon presentation and surrender of the proper coupon hereto attached.

This bond is one of the.....division of the.....issue of bonds of Merced Irrigation District. Said.....issue con-

sists of bonds of the face value of \$12,000,000 divided into thirty series (numbered consecutively from First to Thirtieth, inclusive) and maturing as follows: \$60,000, January 1, 1933; \$63,000, January 1, 1934; \$67,000, January 1, 1935; \$74,000, January 1, 1936; \$75,000, January 1, 1937; \$80,000, January 1, 1938; \$85,000, January 1, 1939; \$90,000, January 1, 1940; \$95,000, January 1, 1941; \$101,000, January 1, 1942; \$107,000, January 1, 1943; \$113,000, January 1, 1944; \$120,000, January 1, 1945; \$127,000, January 1, 1946; \$426,000, January 1, 1947; \$480,000, January 1, 1948; \$480,000, January 1, 1949; \$480,000, January 1, 1950; \$600,000, January 1, 1951; \$600,000, January 1, 1952; \$600,000, January 1, 1953; \$600,000, January 1, 1954; \$720,000, January 1, 1955; \$720,000, January 1, 1956; \$720,000, January 1, 1957; \$720,000, January 1, 1958; \$840,000, January 1, 1959; \$840,000, January 1, 1960; \$960,000, January 1, 1961; \$960,000, January 1, 1962; said.....Division of said.....

Issue consists of 1320 bonds, comprising the bonds of the twenty-second and the twenty-third series [13] of said Issue, maturing respectively January 1, 1954, and January 1, 1955, and numbered consecutively from 5082 to 6401, inclusive, aggregating \$1,320,000. All of said bonds of said.....Division are of the denomination of \$1000 each.

This bond is issued by authority of an Act of the Legislature of the State of California, approved March 31, 1897, entitled, "An Act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," and of the acts amendatory thereof, and supplemental thereto, and pursuant to a vote of the electors of said district at an election duly called and held in conformity with the requirements of said statute.

It is hereby certified, recited and declared, that this bond is issued in strict conformity with the constitution and statutes of the State of California, and with proceedings of the said Irrigation District authorizing the same, and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this bond, have existed, happened and been performed in regular and due time, form and manner as required by law and that this bond, together with all the other indebtedness and liabilities of said Irrigation District does not exceed any limit prescribed by the constitution or statutes of said state.

In Witness Whereof, the said Merced Irrigation District [14] has caused this bond to be signed by the President and Secretary of its

Board of Directors and the seal of said district to be affixed hereto, and has caused all the coupons attached hereto to be signed by said Secretary by his facsimile signature, as of the first day of January, 1922.

MERCED IRRIGATION
DISTRICT,

By
President of Board of Directors of Merced Irrigation District.

.....
Secretary of Board of Directors of Merced Irrigation District.

Interest Coupon No.
\$.....

On the First day of January, 19....., Merced Irrigation District will pay to the bearer at the office of the Treasurer of said District at Merced, in the County of Merced, State of California, on surrender of this coupon, the sum of Dollars in United States Gold Coin, being the semi-annual interest on Bond No. of the Issue.

..... (Signed)
Secretary

III.

That a plan of composition of the aforesaid bond indebtedness of said petitioner, has been prepared

and adopted by the Board of Directors of petitioner in a certain resolution adopted by said Board on the 31st day of May, 1938, which said resolution is hereto attached, marked Exhibit "A" and hereby made a part of this petition and is filed and submitted herewith. [15]

IV.

That all steps necessary to be taken to make said plan of composition effective have been taken, and that heretofore the refunding bonds to be issued and delivered under the conditions of said plan, have been duly authorized by said District. That said bonds will, when issued, bear four per cent (4%) interest per annum, payable semi-annually.

V.

That the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States, has purchased pursuant to contract with petitioner and now owns and holds over ninety per cent (90%) of the principal amount of said bond indebtedness of said District, to-wit, approximately Fourteen Million Six Hundred Eighty-six Thousand Dollars (\$14,686,000.00) of the principal bond indebtedness of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), as aforesaid, and said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned and held.

That there are no bonds owned, held or controlled by said District. That said Reconstruction Finance Corporation has, in writing, accepted said plan of composition and its acceptance is hereunto attached, marked Exhibit "B" and hereby made a part hereof. That a list of all known creditors of said District who are affected by said plan of composition, together with their addresses so far as known to petitioner, and a description of their respective claims is hereunto attached, marked Exhibit "C", and made a part hereof. That said list shows separately the name of the Reconstruction Finance Corporation which has accepted said plan of composition, together with its separate address, and that said [16] list shows separately the names of those creditors of petitioner affected by said plan of composition who have not accepted said plan together with their separate addresses so far as known to petitioner and a description of the bonds whose owners are unknown to petitioner. That petitioner, by filing the list of creditors does not admit the validity of their claims nor does petitioner intend hereby to acknowledge any of said bonds or coupons so listed which are barred by the statute of limitations.

That in addition to the known creditors of said petitioner who are affected by said plan of composition, there is attached hereto, marked Exhibit "D" and made a part hereof, a list of creditors of said district whose claims are not so affected. Division 1

of said Exhibit "D" are claims arising in connection with certain continuing and executory contracts dated July 17, 1924, called "Crocker-Huffman Water Contracts." Under the terms and provisions of said contracts the owners of underlying water rights, agreed to release the same to petitioner, upon the payment by petitioner annually, on July 1st of each year for a certain term of years, the present remainder of which extends to and includes the year 1941, to the owners of said underlying water rights so agreeing to release the same as aforesaid, or their assigns, the respective amounts appearing in said Division 1 of said Exhibit "D"; Division 2 of said Exhibit "D" is a statement of certain claims of the County of Merced, State of California, as a creditor of petitioner, and is divided into two (2) subdivisions, as follows, to-wit: Subdivision "A" consists of a list of certain presently outstanding bonds, together with the maturity dates thereof, of that certain Drainage Improvement District located within and organized by said County of Merced and designated as "Drainage Im- [17] provement District No. 2" of said County of Merced, which bonds are obligations of said County, the payment of the principal amounts of which on behalf of said County, together with interest thereon at the rate of five per cent (5%) per annum, is a present obligation of petitioner by virtue of the terms and provisions of a certain contract of assumption thereof dated

April 6, 1922, entered into by and between petitioner and said County of Merced; Subdivision "B" consists of a list of certain presently outstanding bonds, together with the maturity dates thereof, of a certain Drainage District located in and organized by said County and designated as "Fruitland Drainage District," which bonds are obligations of said County, the payment of the principal amounts of which on behalf of said County, together with interest thereon at the rate of six per cent (6%) per annum, is a present obligation of petitioner by the terms and provisions of a certain contract of assumption thereof heretofore entered into on or about April 6, 1922, by and between petitioner and said Fruitland Drainage District; that none of the creditors' claims named in said Exhibit "D" is involved in or affected by said plan of readjustment; and that only the bond indebtedness of petitioner, is affected by such plan.

VI.

That said plan of composition is fair, equitable and for the best interests of the creditors of Merced Irrigation District who are affected thereby and does not discriminate in favor of or against any creditor or creditors or class of creditors. That the offer of said plan of composition and its acceptance by over ninety per cent (90%) of its bondholders and the filing of this petition are all in good faith and the District is [18] authorized by

law to take all action necessary to be taken to carry out said plan of composition.

VII.

That by said resolution adopted the 31st day of May, 1938, (being Exhibit "A" attached hereto), the Board of Directors of petitioner has authorized the filing of this petition.

Wherefore, petitioner prays:

(a) That the Court enter an order herein approving this petition as properly filed under said Chapter X of said Bankruptcy Act.

(b) That an order be entered fixing a time and place for a hearing of this petition and providing that notice be given to creditors as provided by said act and prescribing the form of such notice of any tax or assessment, or the levying of any execution against the property of petitioner during the pendency of this proceeding; and

(c) That, upon the completion of the hearing of the plan, an interlocutory decree be entered, approving the plan and putting it into effect; and

(d) That, when petitioner shall have complied with the requirements of said interlocutory decree to be performed by it, a final decree be entered discharging petitioner from all debts and liabilities, in accordance with the plan; and

(e) That the Court grant such further orders, [19] decrees and relief in the premises as may be deemed just and equitable.

Dated:

MERCED IRRIGATION

DISTRICT,

By D. K. BARNELL,

President.

And By H. P. SARGENT,

Secretary

Petitioner.

C. RAY ROBINSON,

HUGH K. LANDRAM,

STEPHEN W. DOWNEY,

DOWNEY, BRAND &

SEYMOUR,

Attorneys for Petitioner.

* * * * *

(Verification dated June 16, 1938, omitted.) [20]

EXHIBIT "A"

RESOLUTION OF THE BOARD OF DIRECTORS OF MERCED IRRIGATION DISTRICT AUTHORIZING AND DIRECTING ITS REPRESENTATIVES TO INSTITUTE AND PROSECUTE TO A FINAL DETERMINATION AN ACTION OR PROCEEDING UNDER THE NATIONAL BANKRUPTCY ACT FOR THE PURPOSE OF READJUSTING THE DISTRICT'S OUTSTANDING BOND INDEBTEDNESS AND SETTING FORTH THE PLAN OF COMPOSITION OF SAID BOND INDEBTEDNESS.

Whereas, the territory within the Merced Irrigation District, all of which is located in Merced

County, California, (hereinafter called "district"), consists of lands used principally for agricultural purposes and the district has completed and operates certain improvements and projects devoted chiefly to the improvement of the lands in said district for agricultural purposes, to-wit: The supplying of water for the irrigation of said lands and providing for the drainage of said lands, where necessary, the cost of which was largely paid for out of the proceeds received from the sale of bonds issued and sold by the district for such purpose; and

Whereas, due to the general depression and adverse agricultural conditions existing throughout the United States for the last several years, and the consequent low market value of farm products, the production of farm products in this district has been without profit, the value thereof often being less than the cost of production, with the result that the owners have been and will be unable to pay the district taxes levied upon the lands therein for the purpose of paying the district's bond indebtedness as and when the installments of principal and interest thereof have matured or will mature; and

Whereas, by reason of such adverse agricultural conditions and accumulated delinquent taxes, the value of the lands in the district has greatly decreased; and [21]

Whereas, the district, without success has made due and diligent effort to collect the taxes so levied by it upon the lands therein whereupon it became apparent that unless the outstanding bond indebted-

ness of the district was reduced and refinanced the burden of district taxes upon the lands therein would be greater than the value thereof; and

Whereas, there are now issued and outstanding bonds of Merced Irrigation District totaling the sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) in principal amount, described as follows, to-wit:

(a) An issue of bonds designated as First Issue in the aggregate principal amount of Eleven Million Nine Hundred Forty Thousand Dollars (\$11,940,000.00) payable as follows:

1. Division First, all dated January 1, 1922, being in the aggregate principal amount of Three Million Sixty Thousand Dollars (\$3,060,000.00) bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1934 to 1950 (both inclusive).

2. Division Second, all dated January 1, 1922, being in the aggregate principal amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), bearing interest at the rate of five and one-half per cent (5½%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1951 to 1953 (both inclusive). [22]

3. Division Third, all dated January 1, 1922, being in the aggregate principal amount

of One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00), bearing interest at the rate of Five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1954 to 1955 (both inclusive).

4. Division Fourth, all dated January 1, 1922, being in the aggregate principal amount of Five Million Seven Hundred Sixty Thousand Dollars (\$5,760,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1956 to 1962 (both inclusive).

(b) Issue of bonds designated as Second Issue, all dated May 1, 1924, in the aggregate principal amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1937 to 1964 (both inclusive).

(c) An issue of bonds designated as Third Issue, all dated April 1, 1926, in the aggregate principal amount of One Million Dollars (\$1,000,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually, on the first day of January

and the first day of July of each year, due serially from 1965 to 1966 (both inclusive).

[23]

That all of said bonds have been duly issued under the provisions of said "California Irrigation District Act" which said Act, together with the Act of the Legislature of the State of California, approved June 19, 1931, page 2263, as amended, provide for the method of levying assessments by petitioner upon the lands located therein for the purpose of paying the principal amounts of, and interest on said bonds and for other purposes; and

Whereas, said bond indebtedness and the interest thereon due as of July 1, 1933, and subsequently, is unpaid and in default; and

Whereas, said district is unable to pay said bond indebtedness or its debts as they mature unless said bond indebtedness is readjusted as hereinafter provided; and

Whereas, said district does not own, hold or control any of the bonds or interest coupons appurtenant thereto constituting any of said bond indebtedness; and

Whereas, heretofore the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States of America, allocated certain funds for the purpose of assisting Merced Irrigation District to refinance its bond indebtedness under the plan of composition hereafter described and said district has heretofore, after proceedings to that end duly had and taken, authorized the issuance

and delivery of refunding bonds hereinafter referred to and necessary to carry out said plan of readjustment; and

Whereas, the terms and conditions governing the relations between the Reconstruction Finance Corporation and the Merced Irrigation District; the purchase of presently outstanding old bonds of Merced Irrigation District by the Recon- [24] struction Finance Corporation: the exchange of old bonds purchased by the Reconstruction Finance Corporation for refunding bonds of the Merced Irrigation District: the terms and provisions of said refunding bonds and their issuance and payment by Merced Irrigation District, are set forth in the following resolutions and contracts, to-wit:

1. Resolution of Reconstruction Finance Corporation, dated November 14, 1934, awarding loan to Merced Irrigation District and setting forth the terms and conditions thereof, and certain resolutions of Reconstruction Finance Corporation amendatory thereof and supplemental thereto, all of which resolutions were duly accepted by Merced Irrigation District;

2. Contract duly entered into by and between Reconstruction Finance Corporation and Merced Irrigation Districted, dated August 14, 1935

3. Contract duly entered into between Merced Irrigation District and Reconstruction Finance Corporation, dated September 16, 1935; and;

Whereas, the plan of composition hereinafter set forth has been determined by the district to be fair and equitable to both the holders of its outstanding bonds and to the owners of the lands within the district and to be based upon what said district and the lands thereof shall be able to pay; and

Whereas, it is impossible for the district to consummate said plan unless it institutes and prosecutes to final determination an action or proceeding in the District Court of the United States, in and for the Southern Division of California, Northern Division, (hereinafter called "court") pursuant to the [25] Provisions of Chapter X of the National Bankruptcy Act approved July 1, 1898, as amended by Public No. 302, 75th Congress, approved August 16, 1937, whereby all of the district's outstanding bond indebtedness will be readjusted and refinanced to accordance with the plan of composition therefor as hereinafter set forth;

Now, Therefore, Be It

Resolved, that the following plan of composition of the bond indebtedness of said district be adopted, approved and confirmed as follows, to-wit:

That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be

retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven

and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred [26] Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90), bearing interest at the rate of four per cent (4%) per annum.

The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto. In the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the President and Secretary of the district; and

Be It Further Resolved, that Messrs. C. Ray Robinson, Hugh K. Landram, Stephen W. Downey,

and Downey, Brand and Seymour, as attorneys for this District be, and they are hereby authorized and directed to file in the District Court of the United States for the Southern District of California a petition as provided in the National Bankruptcy Act for the confirmation of said plan for the composition of the bond indebtedness of this District and that the President and Secretary of this Board, or either of them be, and they are hereby authorized and directed to sign and verify said petition in the name of and on behalf of said District and to execute in the name of said District such instruments as may be necessary or proper to obtain the confirmation of said plan and that said attorneys and officers be, and they are hereby authorized to take such other and further action and proceedings on behalf of this District as may be necessary to obtain the confirmation of said plan. [27]

I, H. P. Sargent, Secretary of Merced Irrigation District, do hereby certify that the foregoing is a true and correct copy of resolution adopted at a regular adjourned meeting of the Board of Directors of Merced Irrigation District held on the 31st day of May, 1938 by the following vote of said Board:

Ayes: President D. K. Barnell, W. H. Robinson, E. B. Maze, E. B. Wood, J. A. Wolf.

Noes: None.

Absent: None.

In Witness Whereof, I have hereunto affixed my hand and the seal of the said District, this 2nd day of June, 1938.

[Seal]

H. P. SARGENT,

Secretary

Merced Irrigation District. [28]

EXHIBIT "B"

ACCEPTANCE OF PLAN OF COMPOSITION
OF DEBTS OF MERCED IRRIGATION
DISTRICT, MERCED, CALIFORNIA

Whereas, this Corporation has purchased and now holds bonds aggregating in principal amount \$14,686,000 of Merced Irrigation District, Merced, California; and

Whereas, the total of said bonds held by this Corporation as purchaser is in an amount exceeding 90% of the bonded indebtedness of said District; and

Whereas, said District desires to file a Petition in the United States District Court, under the provisions of Sections 81, 82 and 83 of an Act of Congress of the United States entitled, "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, as amended, in order to effect a plan of composition of its outstanding indebtedness; and

Whereas, the Board of Directors of said District adopted a plan of composition of its outstanding

indebtedness on the basis and including the terms and conditions as follows:

That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing [29] coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven

and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum.

The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1,

1933, and subsequently thereto. In the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the President and Secretary of the district; and

Whereas, such plan of composition appears to be fair, just and reasonable, and adopted in good faith on the part of such District, and has been approved by the Division Chief or Acting Chief of the Drainage, Levee and Irrigation Division and Counsel for this Corporation; and

Whereas, its adoption by Reconstruction Finance Corporation appears advisable;

Now, Therefore, by reason of the foregoing facts, and on the recommendation of the Division Chief or Acting Chief, such proposed plan of composition submitted by the Board of Directors of Merced Irrigation District, Merced, California, be and hereby is approved and accepted by Reconstruction Finance [30] Corporation.

And Reconstruction Finance Corporation consents that such District may file its petition for composition of its indebtedness in the United States District Court, as provided by the Act of Congress entitled, "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereto.

Witness the execution of this acceptance this ninth day of June, 1938.

[Seal]

RECONSTRUCTION

FINANCE CORPORATION

By RONALD H. ALLEN, JR.,

Assistant Secretary. [31]

[Endorsed]: Petition for Confirmation of Plan of Composition of Bond Indebtedness. Filed June 17, 1938. [33]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated that "Exhibit C" attached to and filed with the petition herein is a list of all known creditors of Merced Irrigation District affected by the plan of composition, their addresses so far as known to said district and a description of their respective claims showing separately those who have accepted the plan of composition, together with their separate addresses; and that "Exhibit D" is a similar list of creditors of said District whose claims are not affected by the plan of composition with their addresses so far as known to said district and a description of their respective claims, and that said Exhibits "C" and "D" may be omitted from the record on appeal herein.

Dated: May 29, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND &
SEYMOUR,
STEPHEN W. DOWNEY,
Attorneys for Appellee.
CHARLES L. CHILDERS,
HUGH K. McKEVITT, [34]
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER &
HARRISON,
W. COBURN COOK,
By W. COBURN COOK,
Attorneys for Appellants.

[Endorsed]: Filed July 14, 1939. [35]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled cause that the petition of Merced Irrigation District for confirmation of a plan for the composition and readjustment of its debts was, upon the filing thereof, duly approved by the court as properly filed and was duly and regularly set for hearing by the court and that said petition came on regularly to be heard

before the court upon a date to which the hearing had been duly and regularly continued by the court and that notice of time and place of hearing of said petition was published, mailed and given in all respects for the time and in the manner required by law and by the order of the court.

Dated: May 12, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND &
SEYMOUR,

STEPHEN W. DOWNEY,
Attorneys for Merced Irrigation, District, Appellee. [36]

CHAS. L. CHILDERS,
HUGH K. McKEVITT,
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER &
HARRISON,

W. COBURN COOK,
By W. COBURN COOK,
Attorneys for Appellants.

[Endorsed): Filed May 24, 1939. [37]

At a stated term, to wit: The April Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of

the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 12th day of September in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on proceedings for confirmation of a Plan of Composition of Bond indebtedness filed September 1, 1938; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; Fred Pierce, Esq., appearing for the Debtor;

It is ordered that this matter be hereby continued for hearing at Fresno, California, for October 10, 1938. [38]

[Title of District Court and Cause.]

ANSWERS AND OBJECTIONS OF WEST COAST LIFE INSURANCE COMPANY

Comes now West Coast Life Insurance Company, a corporation, (hereinafter in this Answer sometimes referred to as answering creditor) a creditor of petitioner, Merced Irrigation District, (hereinafter in this answer sometimes referred to as petitioner), and for answer to the petition of said

petitioner for composition of its bond indebtedness filed herein, objects to the plan for composition of bond indebtedness proposed in, referred to in, or filed with said petition, and without consenting thereto, admits, denies and alleges:

I.

That this answering creditor, West Coast Life Insurance Company, is and at all times herein mentioned has been a corporation, duly organized and existing under and by virtue of the Laws of the State of California, for, and engaged in, the transaction of insurance business, authorized by such laws, with its principal office and place of business in the City and County of San Francisco, State of California. [39]

II.

That this answering creditor is now and since long prior to the filing of said petition has been, a creditor of the petitioner herein, to-wit: The owner and holder of certain of the issued, outstanding and unpaid bonds of petitioner, involved in these proceedings, in the principal amount of \$100,000.00, together with unpaid interest coupons attached or originally attached to said bonds, to which they respectively relate, both said bonds and said interest coupons being hereinafter more fully referred to; that said bonds of petitioner so owned and held by this answering creditor were and each of them was for a valuable consideration, sold and issued by petitioner for the purpose of construct-

ing or purchasing necessary irrigation canals or works, or acquiring necessary property and right therefor, or for the purpose of acquiring waters, water rights, reservoirs, reservoir sites or other property necessary for the purposes of said petitioner, or to provide for drainage made necessary by irrigation provided for by said petitioner, or to provide for the construction, acquisition, operation, leasing or control of plants for the generation, distribution, sale or lease of electrical energy or for a combination of two or more of such purposes, by the terms of each of which of said bonds the petitioner promises and agrees to pay to bearer the principal amount thereof on the due date therein named, together with interest thereon at the rate of 6% per annum, payable semi-annually on the 1st day of January and the 1st day of July each year after the date of said bond until the due date thereof, and that each of said semi-annual interest payments on each of said bonds is represented by a coupon attached or originally attached to the bond to which it relates, by the terms of which the petitioner promised and agreed to pay to bearer on the date therein named, the amount of interest represented thereby; that all of said bonds and interest coupons [40] so owned and held by this answering creditor are unpaid and are, and the interest of this answering creditor is materially and adversely affected by the plan of composition proposed in or by said petition; that a full, true and correct list of the said bonds and interest cou-

pons of petitioner, and so owned and held by this answering creditor, is attached hereto, marked Exhibit "A" and by reference thereto made a part of this answer; that column numbered "I" on said Exhibit "A" designates the number of the particular bond so owned and held by this answering creditor, and that in each instance where two numbers are set out in the same line in said column numbered "I" with a line or dash between said numbers, this answering creditor is the owner and holder of the bonds the numbers of which are given, and the owner and holder of the bonds bearing each consecutive number between the numbers given; column numbered "2" on said exhibit designates the particular issue of the bonds of which the bonds referred to in column numbered "I" in the same line is a part; column numbered "3" on said exhibit designates and is the due date or the date of maturity of each of the bonds referred to by number in column numbered "I" in the same line; column numbered "4" on said exhibit indicates and is the principal amount or par value of each of the bonds referred to in column numbered "I" in the same line; column numbered "5" on said exhibit designates by the due dates thereof unpaid interest coupons so owned and held by this answering creditor, and attached or originally attached to the bonds referred to in column numbered "I" in the same line. That each of said bonds and interest coupons so owned and held by this answering creditor and past due, both as herein-

above alleged, was presented for payment to the Treasurer of said Petitioner at his office at Merced, California, and payment thereof then and there demanded on or about the due date thereof, but that payment thereof was in each instance then and there [41] refused upon the ground that money was not available in the fund designated for the payment thereof and that the same was then and there stamped to that effect; that said bonds and interest coupons of petitioner so held and owned by this answering creditor have not been paid nor any part thereof.

III.

That said bonds of petitioner so owned and held by this answering creditor were in the manner provided by law presented by petitioner prior to the issuance thereof for certification as legal investments for all trust funds and for the funds of all insurance companies, banks, both commercial and savings and trust companies, and for the state school funds, and otherwise, and were, after investigation as provided by law, duly certified for said purposes and that each of said bonds, prior to the purchase thereof by this answering creditor, had stamped thereon a certificate in words and figures substantially as follows:

“STATE CONTROLLER’S CERTIFICATE

Sacramento, California,19.....

I, Ray L. Riley, Controller of the State of California, hereby certify that the within bond

No. of Issue of the Merced Irrigation District, issued as of May 1st, 1924, in accordance with an act of the Legislature of California, approved June 13, 1913, a legal investment for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, trust companies, the state school funds and any funds which may be invested in county, municipal or school district bonds, and it may be deposited as security for the performance of any act whenever the bonds of any county, city, city and county, or school district may be so deposited, it being entitled to such privileges by virtue of an examination by the state engineer, the attorney general and the superintendent of banks of the State of California in pursuance of said act. The within bond may also, according to the Constitution of the State of California, be used as security for the deposit of public money in banks in said State.

RAY L. RILEY.

Controller of the State
of California. [42]

with the appropriate date, bond and issue number."

IV.

Answering a portion of paragraph I of said petition, this answering creditor denies that by reason of the facts in said petition alleged or otherwise, petitioner is entitled to the relief offered by

that certain act of Congress of the United States entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, in said petition referred to as "Federal Bankruptcy Act" as said Act has been amended and is now in effect and particularly Chapter X. thereof as amended by public No. 302 of the 75th Congress, Chapter 657, First Session, approved August 16, 1937, in said petition referred to as "Chapter X".

V.

Answering a portion of paragraph II of said petition, this answering creditor is without knowledge as to whether or not petitioner is unable to meet its debts as they mature; and as to whether or not the total amount now in default on the bond indebtedness of said petitioner is in excess of \$5,000,000.00 and as to whether or not petitioner has not been able and is not now able and will not be able to collect revenue from assessments on the lands within its boundaries and/or from tolls and charges fixed for the use of water and/or from the sale of water and power or otherwise or at all sufficient to meet its said obligations now due or as they mature and, therefore neither admits nor denies said allegations, but requires the petitioner to make strict proof thereof, and in this connection this answering creditor is informed and believes and upon such information and belief alleges that long prior to the commencement of these proceedings the Reconstruction Finance Corpora-

tion loaned to the petitioner and petitioner borrowed from Reconstruction Finance Corporation approximately \$8,000,000.00 [43] payable in installments over a period of approximately forty years with interest at the rate of 4% per annum payable semi-annually with which money so borrowed from Reconstruction Finance Corporation by petitioner, the bonds of petitioner alleged in the petition in the principal amount of \$14,686,000.00, or thereabouts, together with the unpaid interest thereon have been paid, satisfied, discharged and that the petitioner has no other or further obligations thereon whatever and upon the same ground this answering creditor alleges that none of the principal amount of the said obligation to Reconstruction Finance Corporation by petitioner is yet due or payable and that all accrued interest upon said loan from Reconstruction Finance Corporation has been fully paid, and that petitioner's only obligations consist of its obligation to Reconstruction Finance Corporation for the payment of said loan together with interest thereon at the rate of 4% per annum, payable semi-annually together with \$1,504,000.00, or thereabouts, principal amount of original bond not paid by said loan from Reconstruction Finance Corporation to petitioner, among which bonds not paid by said loan are the bonds so owned and held by this answering creditor as hereinabove alleged, together with unpaid interest thereon.

VI.

Answering paragraph III of said petition this answering creditor admits that on or about the 31st. day of May, 1938, the Board of Directors of petitioner passed that certain Resolution set out as Exhibit "A" to said petition, which Resolution sets out a so-called plan of composition of the bond indebtedness of Petitioner, but that this answering creditor is informed and believes and upon such information and belief alleges that the plan set out in said Resolution of May 31, 1938, was approved and adopted by said Board of Directors of Petitioner on or prior to the 18th. day of April, 1935, and that said plan has, prior to the commencement of these proceedings, been more than 90% [44] consummated by the retirement through use of said loan from Reconstruction Finance Corporation of \$14,686,000.00, or thereabouts, in principal amount of the bonds alleged in the petition upon the terms set out in said plan of composition.

VII.

Answering a portion of paragraph V of said petition, this answering creditor is without knowledge as to whether or not the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States, has purchased, pursuant to contract of petitioner, and now owns and holds over ninety per cent (90%) of the principal amount of said bond indebtedness of said District, to-wit: Approximately fourteen million six hun-

dred eighty-six thousand dollars (\$14,686,000.00) of the principal bond indebtedness of Sixteen million one hundred ninety-thousand dollars (\$16,190,000.00) as alleged in said petition and said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned and held, and, therefore, neither admits or denies said allegations in said paragraph V, but requires the petitioner to make strict proof thereof.

VIII.

Answering a portion of paragraph VI, of said petition, this answering creditor denies that said plan of composition set out or referred to in said petition is fair, equitable and/or for the best interests of the creditors of Merced Irrigation District who are affected thereby and/or does not discriminate in favor of or against any creditor or creditors or class of creditors; that this answering creditor is without knowledge as to whether or not the offer of said plan of composition and its acceptance by over ninety per cent of its bondholders and the filing of said petition are all in good faith, and, therefore, neither admits or denies said allegations but requires the petitioner to make strict proof thereof. [45]

First Separate Defense

As A Further, Separate, and Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consent-

ing to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition and readjustment alleges:

That this Court is without jurisdiction herein in that prior to the commencement of these proceedings and on or about the 20th day of July, 1937, the petitioner filed its petition for debt readjustment in the Superior Court of the State of California, in and for the County of Merced in an action entitled "In the Matter of the Petition of Merced Irrigation District, an Irrigation District, for readjustment of Debts". and being No. 11675 in said Court; that said petition was filed pursuant to the provision of an Act of the Legislature of California known as the "Irrigation District Refinancing Act" being Chapter IV of the Statutes of California of 1937; that the plan of readjustment set out and described in said petition in the Superior Court of the State of California, in and for the County of Merced, hereinabove alleged, is the same identical plan as the plan of composition set out in these proceedings and that it is therein alleged that said plan of readjustment set out in said action in the Superior Court of Merced County was adopted in the form of a resolution by the board of directors of petitioner on the 15th. day of July, 1937; that this proceeding and the said action in the Superior Court of the State of California, in and for the County of Merced, is between the same identical

parties and involves the same indebtedness: that this answering creditor filed its answer, along with other creditors of petitioner in the said action in the Superior Court above alleged and proceedings were thereupon taken to the end that on or about the 5th. day of January, 1938, a trial on the [46] merits was had in said Superior Court and thereafter judgment was ordered in favor of the petitioner therein and against the respondent and that said action is still pending and undetermined; that said action in the Superior Court hereinabove alleged was commenced and was pending and the Court had fully acquired jurisdiction therein pursuant to said Act, if same is a valid law, prior to the adoption by the Congress of the United States of Chapter X of the Bankruptcy Act alleged in the petition herein.

Second Separate Defense.

As A Further, Separate, and Affirmative Defense, to Said Plan of Composition and to These Proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition, alleges:

That on or about the 18th day of April, 1935, this petitioner commenced a proceeding and filed its petition for debt readjustment in this Court in a proceeding in Bankruptcy; entitled "In the Matter of the Merced Irrigation District, an Irrigation District, Debtor", being No. 3907 in Bank-

ruptcy; that said proceedings for debt readjustment filed in this Court on or about the 18th day of April, 1935, was between the same identical parties that are involved in the present proceeding and involved the same debt obligations as involved in the present proceeding and set for the same identical plan of debt readjustment as is set forth in the present proceeding as the plan of composition, that this answering creditor, together with other creditors of petitioner, in due course filed its answer and objections to said petition and said plan of readjustment therein proposed and proceedings were therein had to the end that final judgment or decree was entered therein in favor of the petitioner and against the respondents from [47] which an appeal was duly and regularly taken by the respondents to the United States Circuit Court of Appeals from the Ninth Circuit resulting in a reversal of said judgment and a mandate that said proceedings in this Court be dismissed and thereupon and upon the coming down and spreading upon the minutes of this Court of the Mandate of the United States Circuit Court of Appeals of the Ninth Circuit in said cause, which mandate was dated April 12, 1937, this Court did in due course make and enter its decree of dismissal of said petition; that thereafter, and within the time allowed by Law, the petitioner petitioned the Supreme Court of the United States in said cause for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

and that said petition was denied by the Supreme Court on October 11, 1937, and that said judgment has long since become final; that by reason of said proceedings and the decree dismissing the same, the petitioner is barred from the prosecution of these proceedings; that the former proceedings by petitioner in this Court as hereinabove alleged were prosecuted under a law substantially similar, but held to be unconstitutional, to the Law under which the present proceeding is prosecuted.

Third Separate Defense

As A Further, Separate, and Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That the petitioner is a political subdivision or governmental agency of the State of California, and that neither it nor its obligations are subject to the bankruptcy power of the United States; that the State of California has not consented nor can it [48] consent to this proceeding nor to any proceeding the result of which will have the effect of impairing the obligation of the contract; that any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Extra Session) Chapter IV or otherwise is unconstitutional and

void in that said purported consent violates the provisions of Article I, Section 16 of the Constitution of California, and Article I, Section 10 of the Constitution of the United States, both relating to the impairing of obligations of contract, and to Article IV, Section 1 of the Constitution of California, as relates to the delegation of Legislative power and Article XIII, Section 6 of the Constitution of California, as relates to the surrender of the power of taxation.

Fourth Separate Defense

As A Further, Separate, Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That Chapter X of the Bankruptcy Act of the United States under which these proceedings are prosecuted is unconstitutional and void in that it violates the provisions of Article I, Section 10, of the Constitution of the United States, and is not authorized by the provisions of Article I, Section 8, Clause 4 of the Constitution of the United States.

Fifth Separate Defense

As A Further, Separate, and Affirmative Defense to Said Plan of Composition and to These Proceedings, this answering creditor, not consent-

ing to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges: [49]

That this answering creditor is informed and believes, and upon such information and belief alleges that the only consent by any creditor of the petitioner to these proceedings and to said plan of composition is given by Reconstruction Finance Corporation, an agency of the United States, and that said Reconstruction Finance Corporation is not the owner of any of the bonds of the petitioner concerning which said plan of composition is proposed; that upon the same grounds, this answering creditor alleges that long prior to the commencement of these proceedings and prior to the adoption by the Congress of the United States of Chapter X. of the Bankruptcy Act of the United States, the petitioner and said Reconstruction Finance Corporation entered into a contract by the terms of which Reconstruction Finance Corporation agreed to loan to the petitioner and did loan to the petitioner and the petitioner borrowed from Reconstruction Finance Corporation approximately eight million dollars (\$8,000,000.00) and that by said contract between Reconstruction Finance Corporation and the petitioner the petitioner agreed to repay to Reconstruction Finance Corporation the total amount of said loan over a period of approximately forty years in in-

stallments with interest at 4% per annum payable semi-annually, and to thereafter issue refunding bonds and deliver same to Reconstruction Finance Corporation therefor; that with said funds so borrowed by petitioner from Reconstruction Finance Corporation, bonds of petitioner alleged in the petition to be outstanding and unpaid, were taken up, and in legal effect paid or retired in the amount of approximately fourteen million six hundred eighty-six thousand dollars (\$14,686,000.00) in principal amount and accrued interest and that since said payment or retirement said bonds have not been and are not now a legal obligation against the petitioner, and that [50] Reconstruction Finance Corporation does not own said bonds but that if said Reconstruction Finance Corporation holds said bonds for any purpose said bonds are held by Reconstruction Finance Corporation are collateral only and that because of said relationship Reconstruction Finance Corporation is not a creditor of petitioner as represented by petitioner's bonds and is not the owner of said bonds so taken up or retired and is without power to consent to these proceedings as contemplated by the said Bankruptcy Act or otherwise.

This answering creditor is further informed and believes and upon such information and belief alleges that Reconstruction Finance Corporation and this answering creditor are not in the same class of creditors; that this answering creditor is

entitled, by its bond contracts with petitioner, to receive from petitioner at the due date the full principal amount upon each of the bonds so held and owned by this answering creditor and entitled to receive the full amount of interest set forth in the respective interest coupons attached or originally attached to the bonds so held and owned by this answering creditor to which said coupons relate and that by the terms of said plan of composition, if made effective, this answering creditor will suffer a loss in its investment in said bonds and coupons of more than 50% of the value thereof, whereas Reconstruction Finance Corporation is entitled to receive from petitioner only the amount of the loan from Reconstruction Finance Corporation to petitioner together with interest thereon at the rate of 4% per annum payable semi-annually as set forth in said contract of said Reconstruction Finance Corporation and petitioner hereinabove alleged which contract and the terms thereof, it is not proposed, in said plan of composition, to change whatever, and that therefore by the terms of said plan of composition, if put into effect, Reconstruction Finance Corporation will suffer no loss, but by forcing this answering creditor to reduce its [51] obligations against petitioner, the Reconstruction Finance Corporation will obtain a material benefit from the terms of said plans of composition, if put into effect, and therefore said plan of composition provides for discrimination between

this answering creditor and Reconstruction Finance Corporation which is unfair and unjust and not contemplated by the act under which these proceedings are prosecuted.

Sixth Separate Defense.

As a further, separate, and affirmative defense to said plan of composition and to these proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That the debts of petitioner sought to be readjusted in this proceeding by said plan of composition are not the only debts or obligations which are, in effect, liens upon the lands within the boundaries of petitioner, but this answering creditor is informed and believes, and upon such information and belief alleges, that there are within the boundaries of petitioner, three or more incorporated cities, three or more drainage districts, and numerous school districts, each owing bonded indebtedness, and that in addition thereto, there are certain road districts owing bonded indebtedness, each an obligation of the owners of the lands, or of the land, within the respective cities and districts, and each similar to the obligations of the same lands or the owners thereof to the bonded debt of petitioner involved in these proceedings, and that in addition to said public debts, this answering creditor is further informed and believes, and upon such infor-

mation and belief alleges, that more than half of the lands [52] within the petitioner are mortgaged or held under deeds of trust as security for private debts of the respective owners thereof, and that those other and additional debts and obligations, public and private, aggregate large sums of money, in excess of Five Million Dollars (\$5,000,000); that at least a portion of said other and additional debts and obligations are, as a matter of law, junior to the bonds of petitioner to which said plan of composition in these proceedings applies, that the bonds of Merced Irrigation District, therefore, constitute only one of the obligations against said lands and the owners thereof; that said plan of composition set out in said petition does not contemplate any readjustment of any such other and additional debts and obligations; and that this answering creditor is informed and believes, and upon such information and belief alleges, that no other proceeding has been commenced or is contemplated to readjust such other and additional debts or obligations, or any of them; that said plan of composition set out in the petition filed herein is unfair, inequitable and not for the best interests of the creditors of petitioner, and that said plan discriminates unfairly in favor of the owners of bonds of said cities, drainage, school and road districts within the boundaries of Merced Irrigation District, and discriminates unfairly in favor of the holders of mortgages and the beneficiaries under

deeds of trust securing private debts upon lands within the boundaries of petitioner.

Seventh Separate Defense.

As a further, separate, and affirmative defense to said plan of composition and to these proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in its petition filed herein, but objecting to the confirmation of said plan of composition alleges: [53]

That this answering creditor is informed and believes and upon such information and belief alleges that the petitioner is not indebted on its bond indebtedness in the amount alleged in the petition or in any other amount or indebted at all exceeding approximately ten million dollars (\$10,000,000) and that of said amount of ten million dollars (\$10,000,000) approximately eight million dollars (\$8,000,000) thereof is not represented by bonds but represented by the contract between petitioner and Reconstruction Finance Corporation hereinabove alleged and that the interest on said amount is not in default and that said amount bears interest at the rate of only 4% per annum payable semi-annually and that no part of the principal amount of said loan has yet matured and that the petitioner is now and will be able, without undue hardship upon petitioner or its assessment payers, to pay the entire unpaid amount of its indebtedness and the interest thereon as same matures and that there is no just reason for requiring this answering cred-

itor to accept in payment of the obligations of petitioner which it holds less than the full face amount thereof.

Eighth Separate Defense.

As a further, separate, and affirmative defense to said plan of composition and to these proceedings, this answering creditor, not consenting to the plan of composition proposed by the petitioner in the petition filed herein, but objecting to the confirmation of said plan of composition alleges:

That with a portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings and described in the petition herein, the petitioner installed large hydro-electric power works and owns and operates said works and sells, under long term contract, electric energy generated at said works; that this answering creditor is informed and believes, and upon [54] such information and belief alleges, that petitioner will receive from the sale of said electric energy over and above the cost of operating said hydro-electric power works a net average annual income in excess of \$450,000; that upon the same ground this answering creditor alleges that the average cost of operation and maintenance of all works of petitioner, other than hydro-electric power works, will not exceed \$350,000 per year, and that the surplus of power revenue over and above the said cost of operation and maintenance will apply in reduction of the amounts necessary to be raised for the purpose of paying interest upon and retirement of the said

bonds of petitioner, and that the remaining portion of interest upon and retirement of the said bonds of petitioner, after said application of power revenue, will constitute the only sums for which the petitioner will be required to raise funds by assessment or otherwise.

That if the plan of composition proposed in the petition herein is made effective, then this answering creditor is informed and believes, and upon such information and belief alleges, that the net revenue which petitioner will receive from the sale of hydro-electric energy, as aforesaid, will be sufficient to more than pay the entire bonded and contract debt of petitioner, both principal and interest, leaving the annual cost of operation and maintenance of the irrigation and drainage works of petitioner only to be raised by petitioner by assessment or otherwise, which costs will constitute only a comparatively nominal charge upon the lands, and this, notwithstanding the fact that the major portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings was used in the construction of storage and other irrigation works without which irrigation on a large scale as now practiced in petitioner, or dependable [55] irrigation at all, would not be possible.

Wherefore, this answering creditor prays that the plan of composition proposed in or by the petition filed herein be disapproved and not confirmed

and that these proceedings be dismissed and that this answering creditor recover its costs herein.

CHAS L. CHILDERS,

Attorneys for West Coast
Life Insurance Company, El
Centro, California.

F. V. KEESLING,
Of Counsel. [56]

State of California,
City and County of San Francisco—ss.

Victor Etienne, Jr., being first duly sworn, deposes and says:

That he is an officer of West Coast Life Insurance Company, a corporation, the answering creditor named in the foregoing Answer and Objections, to-wit, The President thereof, and that he makes this verification for and on behalf of said corporation; that he has read the foregoing Answer and Objections and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated upon information or belief, and that as to those matters that he believes it to be true.

VICTOR ETIENNE, JR.

Subscribed and sworn to before me this 29th day of August, 1938.

[Seal]

EDITH MORRISON,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 10, 1941. [57]

EXHIBIT "A"

1. Bond No.	2. Issue	3. Due Date	4. Principal amount of each bond	5. Unpaid interest coupons	
165	First	Jan. 1, 1934	\$1,000.00	July 1, 1933 &	Subsequent
44-45	Second	Jan. 1, 1939	1,000.00	July 1, 1933 &	"
624-625	First	Jan. 1, 1940	1,000.00	July 1, 1933 &	"
886-888	First	Jan. 1, 1942	500.00	July 1, 1933 &	"
948	First	Jan. 1, 1942	500.00	July 1, 1933 &	"
396-400	Second	Jan. 1, 1943	1,000.00	July 1, 1933 &	"
1141	First	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
1121-1122	First	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
1056	First	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
700	Second	Jan. 1, 1944	1,000.00	July 1, 1933 &	"
7049	First	Jan. 1, 1956	1,000.00	July 1, 1933 &	"
6523-6526	First	Jan. 1, 1956	1,000.00	July 1, 1933 &	"
7441-7450	First	Jan. 1, 1957	1,000.00	July 1, 1933 &	"
7597-7600	First	Jan. 1, 1957	1,000.00	July 1, 1933 &	"
7196	First	Jan. 1, 1957	1,000.00	July 1, 1933 &	"
8065	First	Jan. 1, 1958	1,000.00	July 1, 1933 &	"
9040-9044	First	Jan. 1, 1959	1,000.00	July 1, 1933 &	"
9627-9631	First	Jan. 1, 1960	1,000.00	July 1, 1933 &	"
9410	First	Jan. 1, 1960	1,000.00	July 1, 1933 &	"
9947-9951	First	Jan. 1, 1960	1,000.00	July 1, 1933 &	"
10501-10510	First	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10596-10607	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10432-10435	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10733-10737	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
11122-11124	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10324-10325	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
11140	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
10646	"	Jan. 1, 1961	1,000.00	July 1, 1933 &	"
2400-2407	Second	Jan. 1, 1964	1,000.00	July 1, 1933 &	"

[Endorsed]: Answers and Objections of West Coast Life Insurance Company filed Sep. 1, 1938.

[Title of District Court and Cause.]

STIPULATION RELATING TO ANSWERS
OF FLORENCE MOORE, ET AL.

It is stipulated between appellants and appellees
Merced Irrigation District that

I.

A verified answer and objections to plan was filed in this cause by Florence Moore, American Trust Company, as trustee under a certain agreement between R. S. Moore and American Trust Company, dated December 15, 1927, and as trustee under a certain agreement dated February 2, 1929, between Carrie W. Hunter and Harry A. Hine, Carrie W. Hunter and American Trust Company and Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1927, and John R. Dempster, being the owners and holders of bonds of the Merced Irrigation District, having an aggregate par value in the principal amount of \$105,000.00, as creditors of the Merced Irrigation District, by Messrs. Brobeck, Phleger and Harrison, their counsel, in which said creditors alleged in the first paragraph as follows: [59]

“I.

These respondents allege that Florence Moore is the owner of twenty bonds of Merced Irrigation District, second issue, bearing interest at the rate

of six per cent per annum, of the par value of \$1,000 each, which are numbered and have maturities as follows, that is to say: Nos. B-1972 and B-1981, both inclusive, due January 1, 1963; Nos. 1224 to 1227, both inclusive, and No. 1233, due January 1, 1963; and Nos. 2562 to 2566, both inclusive, due January 1, 1964;

That American Trust Company, as trustee under a certain agreement between R. S. Moore and American Trust Company, dated December 15, 1927, is the owner of fifteen bonds of Merced Irrigation District, first issue, bearing interest at the rate of six per cent per annum, of the par value of \$1,000 each, which are numbered and have maturities as follows, that is to say: Nos. 1362, 1363, 1364, 1377, and 1378, due July 1, 1946; Nos. 1237, 1238, 1239, 1240 and 1251, due July 1, 1945; and Nos. 2118, 2201, 2202, 2203 and 2204, due July 1, 1948;

That American Trust Company, as trustee under a certain agreement dated February 2, 1929, between Carrie W. Hunter and Harry A. Hine, Carrie W. Hunter and American Trust Company, is the owner of five bonds of Merced Irrigation District, first issue, second division, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, of the par value of \$1,000 each, all maturing January 1, 1952, which said bonds are numbered as follows, that is to say: Nos. M-3967, M-3969, M-3971, M-3972 and M-3973;

That Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1927, is the owner of sixty bonds of Merced Irrigation District, first issue, bearing interest at the rate of six per cent per annum, of the par value of \$1,000 each, which are numbered and have maturities as follows, that is to say: [60] Nos. 2133 to 2150, both inclusive, and Nos. 2284 and 2285, due July 1, 1948; Nos. 2599 to 2618, both inclusive, due July 1, 1949, and Nos. 3079 to 3094, both inclusive, and Nos. 3101, 3102, 3103 and 3104, due July 1, 1950.

That John R. Dempster is the owner of one bond of Merced Irrigation District, first issue, fourth division, Series 27, Serial No. 9220, bearing interest at the rate of six per cent per annum, of the par value of \$1,000.

That all of the principal of said bonds and all of the interest thereon accruing on and subsequent to July 1, 1933, is unpaid."

That in the remaining paragraphs of the said answer said creditors set forth substantially the same defenses to the petition for composition herein, as is set forth in the answer of creditors Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed that the petition herein be dismissed and that confirmation of the plan be refused and that the petitioner take nothing by these proceedings, and that the said

creditors have judgment against petitioner for costs and other proper relief; that said answer was filed more than ten days before the time set for hearing of this cause.

II.

That Claire S. Strauss, a creditor of Merced Irrigation District likewise answered in due time the petition herein and alleged that the said Claire S. Strauss was and is a bond creditor of the Merced Irrigation District affected by the plan of composition, owning bonds of said district Numbers 951 to 955 of series 11 of the first division of the first issue of bonds, maturing January 1, 1943, of the denomination of \$1000 each, together with coupons representing interest upon said bonds at 6% per annum, maturing semi-annually, commencing July 1, 1933, through January 1, 1938, and subsequently, and that the total amount of the coupons so [61] maturing amounted to \$1500 and setting forth the dates of presentation and registration of said coupons by the treasurer of the district, alleging said interest coupons to have been presented at periods from July 3, 1933, to January 14, 1938, substantially a short period of time after the respective maturities of the said coupons.

That said creditor further set forth defenses substantially as are set forth in the answer of Mary^a E. Morris, West Coast Life Insurance Company and Milo W. Bekins, et al., above, and prayed that petitioner take nothing by its petition and that it

be dismissed and that the creditors have judgment for reasonable attorney's fees and her costs of suit. This answer was filed by Messrs. Freidenrich & Selig and Kirkbride & Wilson, as counsel.

III.

That likewise in due time Pacific National Bank of San Francisco, a national banking association, through its counsel Hugh K. McKevitt, filed its verified claim and answer to the petition for confirmation of the plan of composition and in its said claim and answer set forth in paragraph I that the said bank is the owner of twenty-five first issue \$1000 6% bonds, issued by petitioner, setting forth the numbers of the bonds and their maturity dates in 1956 and 1959, and that it was the owner of 16 second issue \$1000 6% bonds, dated May 1, 1924, setting forth the numbers of the maturity dates as January 1, 1945, and alleging that all of said bonds bear interest at 6% payable semi-annually and that interest due July 1, 1933, and subsequently remains unpaid; in paragraph II the said creditor set forth a detailed description of the interest coupons maturing upon said bonds from July 1, 1933, semi-annually, through July 1, 1938, showing in each case the date of presentation of the coupons which were substantially the dates of maturity, said coupons being alleged to have been presented to the treasurer for payment on such dates: the total of the coupons [62] so due and presented, was the sum of \$13,530.00, exclusive if interest upon said coupons after maturity.

That in its said answer, the said creditors set forth substantially the same defenses as are set forth in the answers of Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed that the petitioner take nothing by its petition and that the petition be dismissed, and that the court determine that the plan of composition and the act of Congress enacting Chapter IX are unconstitutional and that the plan is unfair, unjust and inequitable, for costs of suit, and other proper relief.

IV.

That Minnie E. Rigby as executrix and Richard tum Suden as executor, of the last will of William A. Lieber, Alias, Deceased also in due time, through their counsel, Peter tum Suden, filed their verified answer and attached thereto their verified proof of claim, and in the answer alleged that said creditors of the Merced Irrigation District own three gold bonds of the Merced Irrigation District first issue, due 1947, in the sum of \$1000 each, bearing interest at 6% per annum, and five gold bonds of \$1000 each, of said district, due 1953, bearing interest at 5½% per annum, each, and in said answer set forth substantially the same defenses as are set forth in the answers of Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed that the petition be dismissed and that said creditors have judgment for their costs; that said proof of claim set forth a detailed descrip-

tion of said \$8000 of gold bonds and a detailed description of the interest coupons detached therefrom, maturing July 1, 1934 and subsequently, and claiming a total indebtedness upon said bonds and coupons of \$10,275.00 as to which the interest coupon portion has matured and remains unpaid. [63]

V.

That R. D. Crowell and Belle Crowell also in due time filed an answer to the petition for composition herein, through their counsel Messrs. Chase, Barnes and Chase and set forth therein their ownership of bonds of the Merced Irrigation District affected by the plan as more fully described in their proofs of claim on file in this cause, and in said answer set forth substantially the same defenses as are set forth in the answers of Mary E. Morris, West Coast Life Insurance Company, and Milo W. Bekins, et al., and prayed for dismissal of the petition and for costs and other proper relief.

VI.

That if the first, second, third, fourth, fifth, sixth, seventh, and eighth separate defenses of West Coast Life Insurance Company, or any of these, as set forth in their answer, be omitted from the printed record herein, it is further stipulated between appellants and appellee Merced Irrigation District that said separate defenses are substantially the same as have been set forth in the sepa-

rate defenses of creditors of the appellants Milo W. Bekins, et al.

That this stipulation may become a part of the record on appeal in this cause in lieu of the answers of Florence Moore, et al., Claire S. Strauss, Pacific National Bank of San Francisco, Minnie E. Rigby, et al., R. D. Crowell and Belle Crowell.

Dated: May 27, 1939.

CHAS L. CHILDERS

HUGH K. McKEVITT

CLARK, NICHOLS & ELTSE

CHASE, BARNES & CHASE

DAVID FREIDENRICH

PETER TUM SUDEN

BROBECK, PHLEGER & HARRISON

W. COBURN COOK

By W. COBURN COOK,

Attorneys for Appellants.

C. RAY ROBINSON. [64]

HUGH K. LAUDRAM,

DOWNEY, BRAND & SEYMOUR,

STEPHEN W. DOWNEY,

Attorneys for Appellees.

[Endorsed]: Filed June 1, 1939. [65]

[Title of District Court and Cause.]

ANSWER OF RESPONDENT,
MARY E. MORRIS

Comes now, Mary E. Morris, a respondent in the above entitled proceeding and a creditor of the above named Merced Irrigation District, and answers the petition on file herein and alleges, admits and denies as follows:

1.

She alleges that she is the owner of bonds of the above named debtor, Merced Irrigation District, in the principal amount of \$20,000.00 together with all interest accruing and falling due upon said bonds and accruing and falling due upon the interest coupons of said bonds. That the claim of the respondent against said debtor on account of said bonds and the interest thereon is set forth in detail in a claim which the respondent has filed or is about to file in the above entitled proceeding. [66] That a true copy of said claim is hereto attached, marked Exhibit A, hereby referred to and by such reference made a part hereof. Respondent alleges that all of the facts and statements set forth in said claim are true.

2.

That the above entitled Court is without jurisdiction of the subject matter of this proceeding.

3.

That the above entitled Court has no jurisdiction to confirm or enforce the plan of composition of the bonded indebtedness or of the indebtedness of said debtor, which plan is referred to in the petition herein. That the above entitled Court has no jurisdiction to conform or enforce any plan of composition of any of the bonded indebtedness of said debtor.

4.

That on April 19, 1935, the above named debtor, Merced Irrigation District, filed in the above entitled Court its petition denominated "Petition for Debt Readjustment". That said petition was numbered 3907 in Bankruptcy in the files of said Court. That said petition described in detail the same bonded indebtedness of the said district which is described in the petition in this case and said petition prayed that the above entitled Court should make its order confirming the said plan of debt readjustment and that said Court should make the same effective against the holders of all of the bonded indebtedness referred to in said petition. That the plan for debt readjustment as described in said petition was the same as the plan of composition of bonded indebtedness described in the petition of the said debtor filed in this case.

That the plan in each case provided for the payment of the same amount upon, or the satisfaction in the same way of, all of the outstanding and un-

paid bonded indebtedness of the said debtor district. [67]

That the petition in said other cause described in detail the bonded indebtedness of said district exactly as the petition in this case describes the same. That Paragraph II of said other petition alleges:

“That petitioner is unable to meet its debts as they mature and it desires to effect a plan of readjustment of its debts.”

That Paragraph II of the petition herein pleads:

“That the petitioner is unable to meet its debts as they mature.”

and then further along the paragraph alleges:

“That by reason of the facts aforesaid, petitioner desires to effect a plan of composition of its outstanding bonded indebtedness.”

which said bonded indebtedness is particularly described in said paragraph. That the description of the bonded indebtedness in said respective Paragraphs II is the same.

That the petition in this case describes the conditions which the petition in the other case alleges created the need for the enforcement of a plan of debt readjustment, except that the petition in this case alleges that the said conditions have continued to exist.

That the bonds and coupons of the debtor district which the respondent in this case holds were owned and held by her at the time of the filing of said petition for debt readjustment on April 19, 1935. That respondent has ever since continued to own and hold said bonded indebtedness. That the said other proceeding was directed against this respondent and that it was the purpose of said other proceeding to enforce the plan of debt readjustment therein described and which said plan is described in the petition in this case against the respondent and to compel and put into effect a readjustment of the bonded indebtedness so held by this respondent in accordance with the plan of debt readjustment or plan of composition hereinbefore referred to. [68]

That this respondent intervened in said other proceeding. That upon appearing in said other proceeding this respondent moved to dismiss the petition in said other proceeding upon the ground that the above entitled Court had no jurisdiction of the subject matter of said petition and no jurisdiction or authority to confirm said plan of debt readjustment or make any order purporting to put the same into effect as against the respondent. That the above entitled Court denied the said motion to dismiss to which ruling the respondent excepted. That in her petition in intervention in said cause the respondent expressly alleged that she did not waive any of the objections set forth in her motion

to dismiss. That she pleaded in detail that the said debtor was not bankrupt or insolvent or unable to meet its debts as they matured; that its plan is unfair, that its enforcement would confiscate in whole or in part the bond obligations of said debtor district owned by respondent and would operate to permit the taking or damaging of the property of the respondent without due process of law and in violation of the 5th Amendment of the Constitution of the United States. That the said petition of respondent alleged facts in detail which are in substance hereinafter alleged in this Answer and which show that the plan of debt readjustment or plan of debt composition of the debtor was and is unfair and discriminatory.

That said other cause was tried by the Court and that the above entitled Court did on March 4, 1936, make and enter its final decree ordering that said plan of debt readjustment be confirmed and describe said plan of debt readjustment as it was described in said petition in said other cause. That the bonded indebtedness referred to in said decree included all of the bonded indebtedness of said district owned and held by said respondent, and said decree provided that said bonded indebtedness should be readjusted exactly as it is proposed in the petition [69] in this cause the same shall be readjusted or composed.

That on March 28, 1936, respondent duly filed her petition for an order allowing an appeal from

said decree last referred to and on March 30, 1936, an order was duly given and made by the Honorable George Cosgrave, United States District Judge, allowing the appeal so prayed for. That in the assignments of error filed with the said petition for an order allowing appeal it was recited and specified that the Court erred in not holding that said Section 80 of said Federal Bankruptcy Act was unconstitutional under the United States Constitution and not within the power of the Federal Government to establish a uniform system of bankruptcy throughout the United States. That said assignments of error further specified that the putting into effect or confirming said plan of debt readjustment was void and illegal interference with the exercise of the sovereign governmental powers of the state conferred upon said debtor district. That said assignments of error further specified that the Court had erred in determining that it had jurisdiction over the subject-matter of the petition for said plan of debt readjustment or that it had jurisdiction to enforce the same or that it had jurisdiction over said district or that it had jurisdiction over the respondent, the appellant in said cause. That upon the making of the order allowing said appeal, citation was duly issued to said Merced Irrigation District and served. That said appeal was in all respects duly perfected.

That said appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit.

That there was some question as to whether the said appeal was of such a nature as that it should be allowed by the United States District Court or a Judge thereof or allowed by the said United States Circuit Court of Appeals. That petition was also filed in said United States Circuit Court of Appeals for an order allowing an appeal [70] from said decree of said United States District Court and that on April 6, 1936, an order was duly given and made by the said United States Circuit Court of Appeals allowing said appeal. That said other cause was in all respects duly appealed to the said United States Circuit Court of Appeals and that all the parties to said cause appeared in said Court on said appeal.

That on March 17, 1937, the appellant, together with other persons appealing in said other cause, filed in said Circuit Court of Appeals a motion to dispense with the printing of the record and to have the cause advanced on the calendar and submitted for judgment of reversal. That said motion was duly served and duly heard. Said motion was upon the ground that before the taking of any evidence on said other trial, all the objecting bondholders, including respondent, had objected to the introduction of any evidence on the ground that the United States District Court was without jurisdiction to entertain said cause or to hear or determine the same and that it was conceded by the said debtor district that the jurisdiction of the Dis-

trict Court depended on Sections 78, 79 and 80 of the Federal Bankruptcy Act enacted May 24, 1934, and that on May 25, 1936, the United States Supreme Court had, in the case of Ashton et al. v. Cameron County Water Improvement District No. One, 298 U. S. 513, determined that the Act of Congress last referred to was unconstitutional and void and that the District Court was without jurisdiction in said cause.

That on April 12, 1937, the said United States Circuit Court of Appeals made its order upon the said motion reciting that said motion should be granted and that a decree should be filed and entered reversing the said decree of the United States District Court and remanding the said cause to the United States District Court with directions to dismiss the same. That on [71] April 12, 1937, the said United States Circuit Court of Appeals duly gave, made and entered its order, a copy of which is hereto attached, marked Exhibit "B", hereby referred to and by such reference made a part hereof. That said debtor district, following the entry of said decree last referred to, applied to the United States Supreme Court for a writ of certiorari to review the said decree of the said United States Circuit Court of Appeals. That the Supreme Court on duly gave and made its order denying said application.

That said order of said United States Circuit Court of Appeals was final before the commence-

ment of this action. That mandate duly issued pursuant to the said decree of the said United States Circuit Court and was filed in the above entitled Court on _____ and that pursuant to the said mandate the above entitled Court did on _____ duly give, make and enter its decree in said other cause dismissing said cause pursuant to said writ of mandate and said last named decree was long since final.

That by virtue of the said prior judgments and adjudication in said other proceeding, which said judgments and adjudication are hereinbefore referred to, said debtor district is barred and estopped from claiming that the above entitled Court has any jurisdiction over the petition filed herein or over the subject-matter of said petition or over the said debtor district or over the respondent or over the bonds and coupons owned by respondent and which were issued by said district and which are referred to in the petition herein.

5.

Herein the Reconstruction Finance Corporation, a corporation, mentioned in the petition, is referred to as the R. F. C.

6.

Respondent denies that the said district is bankrupt or [72] insolvent or unable to meet its debts or its bond obligations as the same mature.

Respondent further alleges:

(a) That said district is already refinanced through the fact that it has acquired over 90% of its bonds with all unpaid coupons thereof at about 50 cents on the dollar of what was due thereon, counting the principal of and the coupons of such bonds.

(b) That the petition herein mentions that funds were obtained by the said district from the said R. F. C. or were advanced by the said R. F. C. for the purpose of acquiring title to the bonds of said district of those particular issues which are mentioned in the petition herein and further that over 90% of the bonds of said issues were taken up through said moneys so obtained from said R. F. C.

Respondent alleges that any moneys obtained from the said R. F. C. and which amounted to approximately \$8,000,000.00 were loaned by the said R. F. C. to said district. That the title to said moneys passed to said district and that all of the bonds of said district, comprising said amount of over 90% were acquired through use of the money owned by said district which was borrowed from the said R. F. C. and through the use and the expenditure of other funds of said district which were not borrowed. The plan of said district to acquire its bonds was called the cash offer plan.

That it was understood and agreed in the contract or agreement whereby the aforesaid loan was made by the R. F. C. to said district that before any amount would be advanced to or for the use

of said district by the said R. F. C. those bondholders who were willing to accept the said cash offer plan would deposit their bonds with the coupons thereof falling due on or after July 1, 1933, with certain depositaries agreed upon [73] by the said R. F. C. and the said district and that thereby it would be determined whether sufficient of the bonds of said district would be deposited by bondholders who were willing to accept said cash offer plan in order to have the said district refinanced in accordance with what the said R. F. C. deemed a proper basis. That following the making of said agreement or arrangement the holders of over 90% of the outstanding bonds of said district of the issues mentioned in the petition herein deposited their bonds with the coupons thereof falling due on and after July 1, 1933, with the said agreed depositaries for transfer under said cash offer plan.

That thereupon the said R. F. C. agreed to provide, advance and loan to said district a part of the funds which would be paid to bondholder in the carrying out of said cash offer plan. That it was a condition of the agreement made by the said R. F. C. that said district would pay out of said loan for each bond of said district together with the coupons of such bonds falling due on and after July 1, 1933, but the sum of 51.501% of the face amount of the principal of the bond, whereas the full price to be paid to each bondholder would be 51.501% of said principal, plus 4% per annum

of said amount from the time the bonds taken up were deposited under agreement to take said amount of 51.501% of principal and the actual payment of said amount of 51.501% of principal. That it was further understood and agreed between the R. F. C. and the said district that said district would pay the expenses of carrying out said refinancing scheme of taking up the bonds of said district and would pay in full all coupons of bonds of said district maturing prior to July 1, 1933.

That to any extent that the allegations of the petition are contrary to what is set forth in this subdivision of Par. 6 of this answer, the matter so set forth is untrue.

That the agreement last hereinbefore referred to was the [74] agreement which was in fact carried out in the taking up of the bonds of said district amounting to over 90% thereof. That of the funds used in carrying out said cash offer plan, not more than 51.501% of the face amount of the principal of the bonds taken up was advanced and loaned by the said R. F. C. That the said district paid to each bondholder who transferred his bonds under said cash offer plan interest at the rate of 4% per annum on said 51.501% of the principal of the bonds of the bondholder from the time of the deposit of his bonds until the same were taken up and transferred under said cash offer plan and that the total paid out by said district on account of said interest amounted to several dollars in the case of

each bond taken up and amounted in all to about \$250,000.00. That the said district did further in pursuance of the said agreement between the said R. F. C. and said district pay out over \$100,000.00 constituting the expenses of carrying out said re-financing scheme of taking up the bonds of said district. That said expenses were necessarily incurred and that but for the incurring of said expenses said cash offer plan could never have been consummated. That it was a fact and it was known to both said R. F. C. and said district that the incurring and paying of said expenses was a necessary expense of the acquisition of said bonds. That furthermore said district did, pursuant to said agreement, pay in full all of the coupons of bonds of said district which were unpaid and which had matured prior to July 1, 1933, and that these coupons aggregated many thousands of dollars.

(c) That the said R. F. C. was notified before it disbursed any moneys for the benefit of said district, that said district was to contribute part of the moneys which were to be paid to bondholders for the surrender of their bonds. That the said R. F. C. was, before it provided any moneys for the taking up of the bonds of the district, supplied with copies of the resolutions [75] of the Board of Directors of the district showing what the district proposed to pay to bondholders for the surrender of their bonds, and that said resolutions showed that the only money which the R. F. C. was to pro-

vide for the taking up of the bonds of the district was 51.501% of the unpaid principal of any bond, regardless of the interest accruing thereon and that the district was undertaking to pay towards the expense of the acquisition of its bonds, the interest, the expenses and additional amounts set out in subdivision (b) of this paragraph.

(d) Respondent alleges that at most the said R. F. C. is a mere pledgee of the bonds which were taken up by said district under said cash offer plan and that all that is due, owing or unpaid from said district to the said R. F. C. is the amount loaned by said R. F. C. to said district. Said R. F. C. is not a bondholder of said district.

(e) Said irrigation district had no authority to enter into a contract with the R. F. C. through which the R. F. C. and the said district would jointly provide moneys to acquire the bonds of said district and which would provide that upon so acquiring the bonds of said district the R. F. C. should at its election or otherwise be considered the absolute owner of the bonds acquired.

Article IV, Section 31 of the State Constitution prohibits an irrigation district from making a gift of its funds or of public property. The bonds which were acquired from the bondholders through the use of moneys borrowed from the R. F. C. and moneys provided by the district were worth more than what was paid for them. That unless the said bonds were worth more than the part of

the price for such bonds contributed by the R. F. C. the arrangement for the taking up of such bonds was illegal and constituted a fraud upon the district and all of its other creditors. That as a matter of fact, before the R. F. C. loan was [76] made, an appraisalment was made of the security for the loan proposed to be made by the said R. F. C. and it was determined by the said R. F. C. and the district that the security for such loan exceeded the amount of loan by approximately 30%.

The law prohibited said district from giving its money or property to anyone.

The Civil Code prohibits forfeiting without foreclosure of property pledged as security for a debt.

7.

That the plan of debt readjustment which the said district seeks to have enforced by its petition on file herein is discriminatory and unfair as to the respondent for the following reasons:

Said plan does not undertake to make any provision for the paying of interest to the respondent upon her coupons and bonds that have matured which will in any way compensate her for that delay in payment represented by the period between the adoption of the present plan of the district and the times of payment to those bondholders of the district who accepted the cash offer plan. That approximately two years have passed since the district began to put into effect its cash offer

plan and to pay out to bondholders who accepted said cash offer plan the consideration for their bonds. That it has been duly determined that the federal proceeding conducted by said district was void. That the interest and principal due to respondent, Mary E. Morris, upon her bonds aggregates large amounts. The fact that payment to the said Mary E. Morris has been delayed is not taken into consideration at all in the plan of said district.

8.

The plan of said district set out in the petition herein is unfair, discriminatory and illegal for the following reasons:

That since the loan was made by the R. F. C. to said district [77] whereby over 90% of the bonded indebtedness of said district was taken up as hereinbefore set forth, the said district had paid to the said R. F. C. interest at 4% per annum upon the amounts loaned by the said R. F. C. to the said district. That in making said payments said district has claimed that the loan so made was different in character from money borrowed through the issuance of refunding bonds. That said district has but a limited capacity to pay its indebtedness, including its bonded indebtedness. That under the law as it stood when the bonds of said district were issued the capacity of said district to pay debts was allocated to the paying of general expenses of said district and the meeting of

the bonds of said district, and there was no provision in the law whereby refunding bonds of said district could be preferred as to security over original bonds of said district. That said district has claimed the right to treat the obligation to pay the said loan to the said R. F. C. as a preferred obligation notwithstanding the sole purpose thereof was to fund or refund existing bonded indebtedness of said district and the said district has continuously since the loaning of moneys by the said R. F. C. to said district devoted all of the moneys raised in said district by taxation other than for general expense to paying interest upon the said R. F. C. loan. That said district has levied taxes for the raising of said moneys so paid and that upon the payment of said taxes the moneys received have been placed in a special fund and said fund has been devoted exclusively to the payment of interest on the said R. F. C. loan. That in fact the moneys so raised constituted a part of the bond fund of said district and said moneys were payable upon the bonds and coupons of said district in the order of presentation thereof. That at least no greater proportion of said money was payable on the said R. F. C. loan than was payable upon the outstanding bonds and coupons of the bond issues of said district. That by this proceeding this district seeks to sanction the illegal acts and conduct [78] of the said district and seeks to have the bonded indebtedness of said district outstanding and which was not taken up under said cash offer

plan treated as if the same were in full effect and without any credit thereon. That in any event said district should be compelled to pay upon its outstanding bonds held by the dissenting bondholders the same proportion of what is due to them as was paid to the said R. F. C.

9.

That said plan of said district is further unfair and discriminatory in this: That when the said district first defaulted in the paying of bond interest it had outstanding warrant indebtedness amounting to \$100,000.00 or thereabouts. And when said district first proposed to obtain from the R. F. C. a loan to adjust its bonded indebtedness it had outstanding a large amount of warrant indebtedness and a large amount of indebtedness of the same class as warrant indebtedness. And that continuously since the time last referred to said district has had outstanding a large amount of indebtedness of the same kind as warrant indebtedness; that is to say, liquidated indebtedness. That all said indebtedness was and is payable by taxes levied upon property within said district in the same manner in which bonds of said district are payable and there was and is no essential difference between bonded indebtedness and such other indebtedness of said district. That no reason whatsoever has existed or exists for singling out the bondholders of said district and seeking to compel

them to accept less than the amount due upon their bonds in settlement of their bond obligations while at the same time refraining from impairing or reducing such other indebtedness in any manner whatsoever. That while such other indebtedness has recently been greatly reduced by said district, this was done to the detriment of the bondholders of said district and through the levy of taxes which could otherwise have been levied [79] for bond service and for the payment of bonded indebtedness of said district. That said plan makes no mention whatsoever of the vast amount of moneys paid out by said district on such other indebtedness. That said plan seeks to prefer holders of such other indebtedness over the holders of the bonds of said district.

10.

That said district's plan is unfair and discriminatory for the following reasons: That said district is and at all times it was located wholly in Merced County and that at all times herein mentioned other governmental subdivisions were located wholly or in part within said district. That when said district adopted its plan of debt readjustment and at all times since said district first defaulted in meeting its bond obligations, all of said other government subdivisions have had general and bonded indebtedness in large amounts payable in substantially the same way as bonds of said district are payable, to-wit, through the levy of

taxes upon land within said irrigation district. That the taxes levied and the tax liens created in favor of said other governmental subdivisions are merely on a parity with taxes and tax liens of said irrigation district. That all the indebtedness of said subdivisions and of said district is of substantially the same character and payable through substantially the same means and that to destroy all of the interest upon the bonds of said irrigation district and to reduce the bonded indebtedness of said irrigation district 25% involves the sacrifice of the property of the bondholders of said district and for the benefit of and to increase the value of the other indebtedness payable by taxation of the land in said district. That said plan of debt readjustment of said district does not propose to alter in any respect such other indebtedness referred to, but the plan of said district proposed [80] to prefer such other indebtedness over the bonded indebtedness of said irrigation district. Said bonded indebtedness of said county and said other governmental subdivisions has at all times herein mentioned aggregated \$150,000.00 or thereabouts.

11.

That the said plan of the said district is further discriminatory and unfair as to respondent, Mary E. Morris, for the following reasons: That when the plan of debt readjustment of this district was originated and ever since that time banks, lending institutions and individual money lenders had

loaned many thousands of dollars upon the lands within said irrigation district upon mortgages and deeds of trust. That in many instances owing to the depression interest was not paid upon these securities and that the value thereof was greatly reduced. That the plan of debt readjustment of the said district does not take into consideration and has never taken into consideration the private loans referred to although the payment thereof was secured by mortgages and deeds of trust upon the very land that comprised the security for the bonded indebtedness of said irrigation district. That the right to have taxes levied to secure such bonded indebtedness was superior to the right created by such mortgages and deeds of trust. That the plan of debt readjustment of said district has always provided for the sacrificing of the bondholders of said district for the benefit of the said secured loans hereinbefore referred to.

12.

Said plan of said district is further unfair and illegal in this:

Said district does not propose to make any restoration of the moneys which said district misappropriated and used by said district and which should have been paid to the bondholders of said district, including respondent. [81]

Said district comes into this Court with unclean hands.

That said district's plan contains no provision for the return to the bond fund of said district of the moneys so illegally misappropriated and used by the said district and its officers as alleged herein, but the plan of said district proposes to perpetuate, sanction and to ratify the illegal acts of said district and its officers in using the funds of said district as said district and its officers might elect and regardless of the title or right thereto in partially completing said plan.

That the said plan seeks to treat all of the bonds and coupons of bonds of said district held by respondent as if the same were wholly due, owing and unpaid and subject to readjustment set forth in the petition herein. That however the respondent is entitled to have paid in full such of her bonds and such of the coupons of her bonds as have matured, together with interest on such bonds and such coupons from the date of presentation thereof at the rate of 7% per annum.

That this arises from the misappropriation and misapplication of the moneys constituting a part of the bond funds of said district which were taken and used by said district as herein set out.

That said district discontinued the paying of interest upon its bonded indebtedness as set forth in the petition herein. That it paid no interest coupons accruing upon its bonds after the coupons which fell due on Jan. 1, 1933. That, however, said district had prior to said date levied taxes for

bond service and after said date said district continued to levy taxes for bond service and as a result of taxation said district received large amounts of money which were paid into or which belonged to the bond fund of said district. That said moneys became subject to payment upon maturing coupons and bonds of said district in the order of presentation thereof and as hereinbefore [82] alleged, respondent caused her matured bonds and the matured coupons of her bonds to be duly and promptly presented to the treasurer of said district for payment and to be duly registered for non-payment and as hereinbefore alleged each of such matured bonds and matured coupons has drawn interest at 7% per annum from the date of the presentation thereof to the treasurer of said district for payment as hereinbefore alleged.

That instead of devoting the moneys in the bond fund of said district to the payment of the coupons of the bonds of said district, including respondent's coupons, said district simply assumed that it could proceed to use, and it did in fact proceed to use, moneys of the bond fund of said district for the purpose of paying warrant indebtedness, the expense of the plan of buying up bonds of said district and in part payment for such bonds under the refinancing plan of said district. That the moneys so diverted from the bond fund of said district and so misapplied aggregated over \$400,000.00.

That said R. F. C. knew of the aforesaid misuse of the moneys of the bond fund of said district when it received in pledge the bonds of said district which it now holds, and that the said R. F. C. at all times knew that the moneys of the bond fund of said district had been so used in the acquisition of the bonds which it holds. That the said R. F. C. cooperated with said district in the misapplication and the misuse of the bond fund moneys of said district as hereinbefore set forth. That this respondent is entitled to have the amount of her unpaid coupons charged on all of the security which the said R. F. C. holds. That she is entitled to have all of her unpaid coupons and bonds paid in full. That the district should be denied all relief herein until it has restored the moneys which it has misappropriated from its bond fund. That said district has no right to consider that it should have the amount due upon the matured bonds and [83] coupons held by this respondent reduced or considered discharged in part.

13.

Respondent denies that the district's plan as set out in its petition has been accepted in writing by the holders of as much as two-thirds in principal amount of each class of the indebtedness affected by the said district's plan.

Respondent alleges that the R. F. C. has no such interest in the bonds which it holds as qualifies it

to give its consent to said plan in accordance with the said Act of March 30, 1937, referred to in the petition, but that said district owns the bonds held by said corporation.

14.

That the State of California has not consented to this proceeding. That the State Act relied on is insufficient to confer said consent. A judicial proceeding which binds only at the option of an adversary or permits endless renewal does not accord due process of law, but is a mere system of coercion.

15.

Said State Act confers conditional consent only and is incomplete.

16.

Respondent further alleges that the Act providing for this proceeding was beyond the power of Congress to enact and is invalid and unconstitutional for the following reasons:

(a) It both directly and indirectly provides for impairing the obligation of the contracts represented by respondent's bonds and coupons in violation of Sec. 16 of Article I of the State Constitution and Subdivision 1, Sec. 10, Article I of the Federal Constitution. By the proceeding referred to the obligations of the bonds and coupons held by respondent will be materially altered, impaired and changed. Said Act is not within the bankruptcy powers of Congress. [84]

(b) It provides for the taking of the property of respondent without due process of law and without providing compensation therefore and in violation of the 5th Amendment to the Federal Constitution. Said act attempts the confiscation of respondent's bonds.

(c) It attempts to make the finality of a judgment of the United States District Court dependent upon the decision of the debtor district and ignores the provision that the Federal Constitution and laws made under it are the supreme law of the land and that the authority of federal courts functioning under any valid act conferring jurisdiction are supreme.

(d) It provides for a judgment, the date of finality of which or the time for appeal from which cannot be determined.

17.

The State act which attempts to sanction this proceeding is void for all the reasons hereinbefore set out in paragraphs 14, 15 and 16 hereof.

18.

Respondent has no information or belief sufficient to enable her to answer the allegations of the petition herein to any extent other than as she has hereinbefore answered, and placing her denials upon that ground, she denies all and singular the remaining allegations of the petition which have not been specifically answered herein.

Wherefore, respondent prays that the Court shall deny to the petitioner all relief and that the Court shall make such other and further order as is proper.

Dated: September 1, 1938.

CLARK, NICHOLS & ELTSE,
Attorneys for Respondent,
Mary E. Morris. [85]

State of California,
County of Alameda—ss.

Mary E. Morris, being first duly sworn, deposes and says:

That she is the respondent named in the within entitled Answer; that she has read the said answer and knows the contents thereof and that the same is true of her own knowledge except as to matters which are therein stated upon her information or belief and that as to such matters she believes the same to be true.

MARY E. MORRIS.

Subscribed and sworn to before me this 1st day of September, 1938.

[Seal] EDITH CHING,
Notary Public in and for the County of Alameda,
State of California. [86]

EXHIBIT "A"

[Title of District Court and Cause.]

CREDITOR'S CLAIM

CLAIM OF MARY E. MORRIS AGAINST THE
ABOVE NAMED DEBTOR

State of California,
County of Alameda—ss.

Mary E. Morris, being first duly sworn deposes and says:

1. That affiant, Mary E. Morris, owns and holds bonds referred to in the petition in the above entitled composition proceeding and which are subject to said proceeding and which said bonds were issued by the above named debtor, Merced Irrigation District, and that she owns and holds certain coupons of said bonds.

2. That all of said bonds belong to the first issue of the bonds of said District. [87]

3. That the following Schedule shows the division to which said bonds belong, the numbers of the said bonds, and the due dates and the amounts of said bonds:

SCHEDULE

1st Division Numbers of Bonds	Series No.	Due Dates	Amounts
Bond No. 319	4	Jan. 1, 1936	\$1,000.00
Bond No. 394	5	Jan. 1, 1937	1,000.00
Bond No. 474	6	Jan. 1, 1938	1,000.00
Bond No. 559	7	Jan. 1, 1939	1,000.00
Bond No. 649	8	Jan. 1, 1940	1,000.00
Bond No. 744	9	Jan. 1, 1941	1,000.00
Bond No. 943	10	Jan. 1, 1942	500.00
Bond No. 944	10	Jan. 1, 1942	500.00
Bond No. 1052	11	Jan. 1, 1943	1,000.00
Bond No. 1053	11	Jan. 1, 1943	1,000.00
Bond No. 1165	12	Jan. 1, 1944	1,000.00
4th Division Numbers of Bonds			
Bond No. 8296	26	Jan. 1, 1958	1,000.00
Bond No. 8297	26	Jan. 1, 1958	1,000.00
Bond No. 8298	26	Jan. 1, 1958	1,000.00
Bond No. 8299	26	Jan. 1, 1958	1,000.00
Bond No. 8300	26	Jan. 1, 1958	1,000.00
Bond No. 9289	27	Jan. 1, 1959	1,000.00
Bond No. 9290	27	Jan. 1, 1959	1,000.00
Bond No. 9291	27	Jan. 1, 1959	1,000.00
Bond No. 9292	27	Jan. 1, 1959	1,000.00
Bond No. 9293	27	Jan. 1, 1959	1,000.00
			<hr/>
			\$20,000.00

4. That the said Bond No. 319 which so matured on January 1, 1936, was duly presented to the treasurer of said District for payment on February 28, 1936, and that at said time said treasurer refused to pay said bond upon the ground that said district did not have sufficient funds to pay said bond and that at the time of such refusal and on said date of February 28, 1936, said treas-

urer registered said bond for non-payment. That the whole amount of said bond, to-wit, the sum of \$1,000.00, remains due, owing and unpaid from said District to affiant together with interest thereon at the rate of 7% per annum.

5. That the said Bond No. 394 which so matured on January 1, 1937, was duly presented to the treasurer of said District for [88] payment on June 10, 1937, and that at said time said treasurer refused to pay said bond upon the ground that said District did not have sufficient funds to pay said bond and that at the time of such refusal and on said date of June 10, 1937, said treasurer registered said bond for non-payment. That the whole amount of said bond, to-wit, the sum of \$1,000.00, remains due, owing and unpaid from said District to affiant together with interest thereon at the rate of 7% per annum.

6. That the said Bond No. 474 which so matured on January 1, 1938, was duly presented to the treasurer of said District for payment on Jan. 2, 1938, and that at said time said treasurer refused to pay said bond upon the ground that said District did not have sufficient funds to pay said bond and that at the time of such refusal and on said date of Jan. 2, 1938, said treasurer registered said bond for non-payment. That the whole amount of said bond, to-wit, the sum of \$1,000.00, remains due, owing and unpaid from said District to affiant

together with interest thereon at the rate of 7% per annum.

7. That each of said bonds provided that the said debtor District would pay interest on the principal amount thereof at the rate of 6% per annum semi-annually on the first day of July and the first day of January from time of issuance to and including the date of maturity of such bond. That each interest installment so agreed to be paid upon a bond was represented by a coupon in the sum of \$30.00 and that in such coupon the said debtor District agreed to make payment of semi-annual interest as aforesaid upon the bond to which the coupon was attached and is the amount of the coupon. All said interest coupons were originally attached to the respective bonds. That affiant owns all of the coupons representing interest maturing on all of the aforesaid bonds which she owns, beginning with the coupons thereof maturing on July 1, 1933, and including all subsequent coupons. [89] That all of said coupons which have matured have been detached but are owned and held by affiant. That the aforesaid coupons which have not as yet matured are still attached to the respective bonds and are owned and held by affiant.

That after said coupons matured they were duly presented to the treasurer of said District for payment and at the time of the presentation thereof the said treasurer refused to pay such coupons upon the ground that said District did not have

funds sufficient to pay the same and that in each case at the time coupons were so presented and payment thereof refused the said coupons were registered for non-payment.

That the number of said coupons so owned and held by affiant and the dates of maturities of such coupons and the dates of the registration thereof for non-payment as aforesaid and the total amounts of said coupons are as shown in the following schedule:

SCHEDULE

No. of Coupons	Date Due	Date Registered	Amount Due
20	July 1, 1933	July 27, 1933	\$600.00
20	Jan. 1, 1934	Apr. 9, 1934	600.00
20	July 1, 1934	July 1, 1934	600.00
20	Jan. 1, 1935	Jan. 1, 1935	600.00
20	July 1, 1935	Dec. 17, 1935	600.00
20	Jan. 1, 1936	Feb. 18, 1936	600.00
19	July 1, 1936	July 1, 1936	570.00
19	Jan. 1, 1937	June 10, 1937	570.00
18	July 1, 1937	July 2, 1937	540.00
18	Jan. 1, 1938	Jan. 2, 1938	540.00
17	July 1, 1938	July 1, 1938	510.00
			<hr/> \$6330.00

8. That as set forth in the foregoing schedule the total of the said coupons other than the interest accruing thereon amounts to \$6330.00 and that said amount is wholly due, owing and unpaid from the debtor District to affiant, and that in addition interest is due, owing and unpaid upon each afore-

said coupon from the date of maturity thereof at the rate of 7% per annum.

That likewise interest is due, owing and unpaid on said [90] three bonds which have matured and which are in the principal sum of \$1,000.00 in each case from the date of maturity of the bond.

That in the event interest is allowable upon the said bonds and the said coupons only from the date of presentation and registration, then the interest claimed is interest at 7% from date of registration in the case of each bond and in the case of each coupon.

That affiant claims interest from the date of maturity of each bond and each coupon because before the maturity of any of the aforesaid bonds or coupons the debtor district had determined and all of its officers had determined that nothing would be paid on any of the bonds or coupons of said district even though the same might be presented to the treasurer of said district for payment and even though funds might be on hand with which to pay the same.

That moreover, said district and its officers have kept the bond fund of said district empty by making other uses of the moneys that would otherwise be available for application upon bonds and that presentation of any of the aforesaid bonds or coupons for payment would have been futile.

That said district and its directors and other officers have taken from the bond fund of said dis-

trict large amounts which but for such taking would have been available to make payments upon the matured bonds and matured coupons of affiant. That they have juggled the bond fund moneys of said district and used the same to pay warrants of said district and that the said debtor district should be compelled not only to pay interest in accordance with the terms of said bonds but also interest upon coupon interest that has matured.

That affiant claims all of the principal and all of the coupon interest and all of the interest on principal and all the interest upon coupon interest to which she may be entitled under the facts.

MARY E. MORRIS

Subscribed and sworn to before me this 1st day of September, 1938.

[Seal]

EDITH CHING

Notary Public in and for the County of Alameda,
State of California. [91]

EXHIBIT "B"

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 8165

REED J. BEKINS, et al., etc.,

Appellants,

vs.

MERCED IRRIGATION DIST., et al.,

Appellees.

DECREE.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and on motion of appellants for reversal of decree herein, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the motion be, and hereby is granted, and that the decree of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellants and against the appellees, and that this cause be, and hereby is remanded to the said District Court with directions to dismiss the cause. [92]

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellants recover against the

appellees for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered April 12, 1937.
Paul P. O'Brien, Clerk.

[Endorsed]: Answer of Respondent, Mary E. Morris. Filed Sep. 2, 1938. [93]

[Title of District Court and Cause.]

STATEMENT OF CLAIM AND INTEREST OF
WEST COAST LIFE INSURANCE COMPANY

West Coast Life Insurance Company, a corporation, who has filed herein its Answer and Objections, to which Answer and Objections reference is hereby made and without waiving any defense therein or which may hereafter be set out, but insisting upon the same, makes this further verified statement of its claim and interest herein and shows:

That West Coast Life Insurance Company is now and since long prior to the filing of the petition herein has been, a creditor of the petitioner herein, to-wit: the owner and holder of certain of the issued, outstanding and unpaid bonds of petitioner in the principal amount of \$100,000.00, together with unpaid interest coupons attached or originally attached to said bonds, both said bonds and said interest coupons being hereinafter more fully referred to; that by the terms of each of said bonds so held and owned by this claimant, petitioner

promised and agreed to pay to bearer the principal amount thereof on the due date therein named, together with interest at the rate of 6% per annum, payable semi-annually on the 1st day of January and the 1st day of July of each year after the date of said bond until the due date thereof, and that each of said semi-annual interest payments on each of said bonds is represented by a coupon [94] attached or originally attached to the bond to which it relates, by the terms of which the petitioner promised and agreed to pay to bearer on the date therein named, the amount of interest represented thereby.

That the principal amount of said bonds so owned and held by this claimant and unpaid is \$100,000.00.

That the amount of past due, presented and unpaid interest coupons so held and owned by this claimant and originally attached to the bonds so held and owned by this claimant and above referred to is \$32,730.00 together with interest thereon at the rate of 7% per annum upon \$3,000.00 thereof from July 1, 1933; upon \$3,000.00 thereof from January 1, 1934; upon \$2,970.00 thereof from July 1, 1934; upon \$2,970.00 thereof from January 1, 1935; upon \$2,970.00 thereof from July 1, 1935; upon \$2,970.00 thereof from January 1, 1936; upon \$2,970.00 thereof from July 1, 1936; upon \$2,970.00 thereof from January 1, 1937; upon \$2,970.00 thereof from July 1, 1937; upon \$2,970.00 thereof from January 1, 1938 and upon \$2,970.00 thereof from July 1, 1938.

That all of said interest coupons past due and unpaid as above referred to have been detached from the said bonds to which they relate and are held and owned by this claimant.

That all interest coupons appertaining to the respective bonds so held and owned by the claimant as above set out and to mature after the date of this statement are attached to said bonds.

That a full, true and correct list of the said bonds and interest coupons of petitioner, all of which are unpaid, and so owned and held by this claimant, West Coast Life Insurance Company, is attached hereto, marked Exhibit "A" and by reference thereto made a part of this statement; that column numbered "1" on said Exhibit "A" designates the respective numbers of the particular bonds so owned and held by this claimant, and that in each [95] instance where two numbers are set out in the same line in said column numbered "1" with a line or dash between said numbers, this claimant is the owner and holder of the bonds whose numbers are given, and the owner and holder of the bonds bearing each consecutive number between the numbers given; column numbered "2" designates the particular issue of the bonds of which the bonds referred to in column numbered "1" in the same line is a part; column numbered "3" designates and is the due date or the date of maturity of each of the bonds referred to in column numbered "1" in the same line; column number "4" indicates the particular series to which each of the bonds referred to in column numbered "1", in the same line, be-

longs; column numbered "5" indicates and is the principal amount or par value of each of the bonds referred to in column numbered "1" in the same line; column numbered "6" designates by the due dates thereof unpaid interest coupons so owned and held by this answering creditor, and attached or originally attached to the bonds referred to in column numbered "1" in the same line.

[Seal]

WEST COAST LIFE INSUR-
ANCE COMPANY

By VICTOR ETIENNE, JR.

President.

CHAS. L. CHILDERS,

Attorney for West Coast Life

Insurance Company. [96]

State of California,

City and County of San Francisco—ss.

Victor Etienne, Jr., being first duly sworn, deposes and says:

That he is an officer of West Coast Life Insurance Company, a corporation, the claimant named in the foregoing statement of claim and interest, to-wit: the President thereof, and that he makes this verification for and on behalf of said corporation; that he has read the foregoing statement of claim and interest and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated upon information or belief, and that as to those matters he believes it to be true.

VICTOR ETIENNE, JR.

Subscribed and sworn to before me this 6 day of September, 1938.

[Seal] EDITH MORRISON,

Notary Public in and for the City and County of San Francisco, State of California. My Commission expires January 10, 1941.

[Endorsed]: Statement of Claim and Interest of West Coast Life Insurance Company. Filed Sep. 12, 1938.

(Exhibit "A" list of bonds omitted; see list of bonds attached to answer fld. Sep. 1, 1938). [97]

[Title of District Court and Cause.]

PROOF OF CLAIM OF R. D. CROWELL

At Los Angeles, California, in said District of California, on the 22nd day of August, 1938, came R. D. Crowell and made oath and says:

That Merced Irrigation District, the person by whom a Petition for Confirmation of a Plan of Composition of Bond Indebtedness has been filed, was at and before the filing of said Petition, and still is, justly and directly indebted to said Deponent in the sum of \$107,000.00 with interest thereon at the rates hereinafter specified from July 1, 1933, to the date of maturity of the bonds hereinafter referred to, said interest being evidenced by semi-annual coupons attached to said bonds and more particularly hereinafter described.

That the consideration for said debt consists of gold bonds of said Merced Irrigation District in the form set forth in the Petition on file herein,

said bonds all being of the first issue, all dated as of January 1, 1922, and being of a series, division and maturity and numbered as hereinafter set forth, each of which said bonds has attached thereto semi-annual interest coupons representing semiannual installments of interest at the rates specified in the following schedule, being the coupons due on July 1, 1933, and all semiannual coupons subsequently maturing. [98]

Bond Numbers	Series	Division	Interest Rate	Maturity	Principal Amount
3814 - 3815 and 3816	19	2	5½%	1/1/51	\$3,000.00
3918 to 3922 both inclusive	20	2	5½%	1/1/52	5,000.00
4715 to 4721 both inclusive					
4887 to 4890 both inclusive	21	2	5½%	1/1/53	11,000.00
5082 to 5086 both inclusive, 5120 - 5181 and 5321 to 5324 both inclusive	22	3	5½%	1/1/54	11,000.00
5706 to 5716 both inclusive, 5766, 5799 to 5806, both inclusive, 5923 to 5947 both inclusive, 5992 to 6011, both inclusive, and 6026 to 6031 both inclusive	23	3	5½%	1/1/55	71,000.00
9941 and 9967 to 9971 both inclusive	28	4	6%	1/1/60	6,000.00

That no part of said debt has been paid; that there are no set-offs or counter claims to the same.

R. D. CROWELL.

Subscribed and sworn to before me this 22nd day of August, 1938.

[Seal] ANNE SELBY,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Proof of Claim of R. D. Crowell
Filed Sep. 12, 1938. [99]

[Title of District Court and Cause.]

PROOF OF CLAIM OF BELLE CROWELL

At Los Angeles, California, in said District of California, on the 22nd day of August, 1938, came Belle Crowell and made oath and says:

That Merced Irrigation District, the person by whom a Petition for Confirmation of a Plan of Composition of Bond Indebtedness has been filed, was at and before the filing of said Petition, and still is, justly and directly indebted to said Depo-
nent in the sum of \$22,000.00 with interest thereon at the rates hereinafter specified from July 1, 1933, to the date of maturity of the bonds hereinafter referred to, said interest being evidenced by semi-annual coupons attached to said bonds and more particularly hereinafter described.

That the consideration for said debt consists of gold bonds of said Merced Irrigation District in the

form set forth in the Petition on file herein, said bonds all being of the first issue, all dated as of January 1, 1922, and being of a series, division and maturity and numbered as hereinafter set forth, each of which said bonds has attached thereto semi-annual interest coupons representing semi-annual installments of interest at the rates specified in the following schedule, being the coupons due on July 1, 1933, and all semiannual coupons subsequently maturing.

Bond Numbers	Series	Division	Interest Rate	Maturity	Principal Amount
2323 to 2327 both inclusive—					
2714 - 2721	17	1	6%	7/1/49	\$7,000.00
3269 to 3273 both inclusive	18	1	6%	7/1/50	5,000.00
					[100]
5337 to 5343 both inclusive—					
5397 - 5398 - 5399	22	3	5½%	1/1/54	10,000.00

That no part of said debt has been paid; that there are no set-offs or counter claims to the same.

BELLE CROWELL.

Subscribed and sworn to before me this 22nd day of August, 1938.

[Notarial Seal] ANNE SELBY,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Proof of Claim of Belle Crowell
Filed Sep. 12, 1938. [101]

[Title of District Court and Cause.]

ANSWER AND OBJECTIONS TO PETITION
FOR CONFIRMATION OF A PLAN OF
COMPOSITION OF BOND INDEBTED-
NESS AND PROOF OF CLAIMS.

Come now respondents Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased, Reed J. Bekins, Cooley Butler, Chas. D. Bates, Lucretia B. Bates, Edna Bicknell Bagg, John D. Bicknell Bagg, Mary B. Cates, Nancy Bagg Eastman, Charles C. Bagg, Horace B. Cates, Barker T. Cates, Mary Edna Cates Rose, Mildred C. Stephens, N. O. Bowman, W. H. Heller, Fannie M. Dole, James Irvine, J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper and George B. Miller as Trustees of Cogswell Polytechnical College, Tulocay Cemetery Association, a corporation, Percy Griffin, Emogene Cowles Griffin, D. Lyle Ghirardelli, A. M. Kidd, Grayson Dutton, Frances E. Shanahan, Stephen H. Chapman, Edith O. Evans, J. Ofelth, Dante Muscio, I. M. Green, E. J. Greenhood, Otis M. Judson, Julia Sunderland, Lily Sunderland, Florence S. Ray, Joseph S. Ray, Amelia Kingsbaker, S. Lachman Company, a corporation, Sue Lachman, Sophia Mackenzie, Nettie Mackenzie, R. J. McMullen, J. R. Mason, Gilbert Moody, [102] William Payne, G. H. Pearsall, Alice B. Stein, Sherman Stevens, E. G. Soule, Margaret B.

Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased, Theo. F. Thieme, Fletcher G. Flaherty, Frances V. Wheeler, Miriam H. Parker, Nicholas H. Prusch, Apphia Vance Morgan, H. S. Dutton, First National Bank of Pomona, George F. Covell, Alma H. Woore, George Habenicht, Seth R. Talcott, Adolf Aspegren, J. H. Fine, and Mrs. J. H. Fine, creditors of petitioner, Merced Irrigation District, and answering and objecting to the petition for confirmation of a plan of composition of bonded indebtedness herein, admit, deny, and aver as follows; and hereby present their proof of claims:

I.

Said respondents allege and by way of proof of their several claims and in accordance with the stipulation of the petitioner permitting proof of claim to be made in this manner show that they are the owners of bonds of said district as described in its petition herein, in the several aggregate principal amounts set opposite their names hereafter in this paragraph, and which said bonds are unpaid, and each of which said bonds have attached thereto or originally had attached thereto interest-bearing coupons, as provided by said issues and which matured semi-annually, as aforesaid, commencing July 1, 1933, to the present time, and have been respectively presented for payment to the treasurer of said district and payment thereof refused, and that said respondents are respectively the owners

and holders of such attached or detached coupons appertaining to their said bonds, viz:

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Martin Bekins, deceased.....	\$188,000.00
Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased.....	28,000.00
Reed J. Bekins.....	4,000.00
Cooley Butler.....	17,000.00
[103]	
Chas. D. Bates.....	47,000.00
Lucretia B. Bates.....	47,000.00
Edna Bicknell Bagg.....	15,000.00
John D. Bicknell Bagg.....	1,000.00
Mary B. Cates.....	1,000.00
Nancy Bagg Eastman, Charles C. Bagg, Horace B. Cates, Barker T. Cates, Mary Edna Cates Rose, Mildred C. Stephens	27,000.00
N. O. Bowman.....	6,000.00
W. H. Heller.....	3,000.00
Fannie M. Dole.....	5,000.00
James Irvine.....	126,000.00
J. C. Titus.....	10,000.00
Cogswell Polytechnical College.....	50,000.00
Tulocay Cemetery Association.....	3,000.00
Percy Griffin.....	1,000.00
Emogene Cowles Griffin.....	4,000.00
D. Lyle Ghirardelli.....	5,000.00
A. M. Kidd.....	1,000.00

Grayson Dutton.....	3,000.00
Frances E. Shanahan.....	4,000.00
Stephen H. Chapman.....	1,000.00
Edith O. Evans.....	5,000.00
J. Ofelth.....	5,000.00
Dante Muscio.....	1,000.00
I. M. Green.....	2,000.00
E. J. Greenhood.....	10,000.00
Otis M. Judson.....	10,000.00
Julia Sunderland.....	5,000.00
Lily Sunderland.....	5,000.00
Florence S. Ray.....	9,000.00
Joseph S. Ray.....	2,000.00
Amelia Kingsbaker.....	3,000.00
S. Lachman Company.....	11,000.00
Sue Lachman.....	1,000.00
Sophia Mackenzie.....	10,000.00
Nettie Mackenzie.....	5,000.00
R. J. McMullen.....	5,000.00
J. R. Mason.....	18,000.00
Gilbert Moody.....	25,000.00
William Payne.....	6,000.00
G. H. Pearsall.....	12,000.00
Alice B. Stein.....	3,000.00
Sherman Stevens.....	10,000.00
E. G. Soule.....	20,000.00
Margaret B. Thomas.....	10,000.00
Isabella Gillett and Effie Gillett Newton as executrices of J. N. Gillett Estate	5,000.00
Theo. F. Thieme.....	3,000.00
Fletcher G. Flaherty.....	1,000.00

Frances V. Wheeler.....	6,000.00
Miriam H. Parker.....	8,000.00
Nicholas H. Prusch.....	5,000.00
Apphia Vance Morgan.....	15,000.00
H. S. Dutton.....	2,000.00
First National Bank of Pomona.....	20,000.00
George F. Covell.....	10,000.00
Alma H. Woore.....	3,000.00
George Habenicht.....	1,000.00
Seth R. Talcott.....	4,000.00
Adolf Aspegren.....	10,000.00
J. H. Fine & Mrs. J. H. Fine.....	1,000.00

That the aggregate principal amount of said bonds is \$884,000.00 of which but few have matured, and that of said bonds which have [104] not matured the maturities are over the ensuing years up to and including 1966, and all of which bonds bear interest at 5½% or 6% per annum, represented by interest-bearing coupons until they mature, and thereafter at the rate of 7% per annum until paid.

II.

Deny that petitioner is entitled to the relief offered by Chapter X of the bankruptcy act of the United States.

III.

Deny that petitioner is unable to meet its debts as they mature; deny that petitioner has not been able, or is now unable, or will not be able to collect revenue and assessments on the lands within its

boundaries or otherwise, sufficient to meet its obligations now due or as they mature.

IV.

As to paragraph III and IV of said petition, respondents have no knowledge or information sufficient to form a belief as to whether the allegations of said paragraph are true and on said ground deny that allegations of said paragraphs are true.

V.

Answering paragraph V of the petition, respondents deny that Reconstruction Finance Corporation is a creditor of petitioner as to the amount of the full face value of bonds therein mentioned or any other amount or a creditor at all affected by said plan of composition of readjustment; deny that holders of 90% or any other amount of the debts of petitioner affected by said plan of composition or readjustment or any other proportion thereof have consented to said plan of composition or readjustment.

VI.

Answering paragraph VI of the petition respondents deny that said plan of composition is fair and equitable or for the best interest of the creditors of said petitioner; and deny that [105] said plan does not discriminate in favor of any creditor or creditors, or class of creditors, and allege that said plan discriminates unfairly in favor of the Reconstruction Finance Corporation and against re-

spondents. Deny that said plan of composition or its acceptance by the Reconstruction Finance Corporation is in good faith or that petitioner is authorized to take any action necessary to carry out said plan.

VII.

Answering paragraph VII of said petition, respondents have no knowledge or information sufficient to form a belief as to the truth of the allegations thereof, and on that ground deny said allegations.

Separate Defenses

VIII.

As a first and separate defense to said petition these answering respondents allege:

That heretofore and prior to the commencement of this proceeding, the petitioner filed a petition in bankruptcy in this court under the provisions of Chapter IX of the Bankruptcy Act of the United States and set up in said petition identically the same plan of composition proposed in this proceeding and alleged therein that the bond issues of petitioner, as described in these proceedings, were proposed to be adjusted by the payment of 51.501 cents on each dollar of principal with nothing for interest exactly as set forth in the plan herein, and in said former proceedings set forth the names and lists

of bondholders being creditors of said district with the sole difference that at the time of the commencement of said proceeding the said bonds were in the hands of the former individual and corporate bondholders other than the Reconstruction Finance Corporation, and said petitioner set forth therein that a large proportion of such [106] bondholders had accepted the said plan being approximately 87 per cent of the bonds just as is claimed in these proceedings and had deposited their bonds in escrow subject to said plan; that said approximate 87 per cent had so accepted said plan and during the course of said proceeding the holdings of said 87 per cent were paid off and discharged by a loan received from the Reconstruction Finance Corporation and the respondents herein were respondents in said cause and defended said action which said action went to trial and a judgment was rendered in favor of the district confirming said plan.

That on or about the 4th day of March, 1936, the District Court of the United States for the Southern District of California rendered its decree and judgment confirming the said plan after a full trial and hearing upon the merits of said plan, whereupon the respondents in said cause, being the respondents in this cause appealed therefrom to the Circuit Court of Appeals for the Ninth Circuit, wherein said cause was reversed April 12, 1937, as reported in 89 Fed. (2d) 1002, from which said petitioner applied to the United States Supreme

Court for a writ of certiorari and the same was denied (58 Sup. Ct. 30) on October 11, 1937.

IX.

As a second and separate defense to said petition, these answering respondents allege:

That on or about July 20, 1937, the petitioner filed a petition in the Superior Court of the State of California, in and for the County of Merced, under the provisions of California Statutes of 1937, Chapter 4, for the purpose of enforcing and consummating, in proceedings in the nature of bankruptcy proceedings, identically the same plan of composition alleged and set forth in the present proceeding. That said Superior Court, after submission of the cause, ordered that an interlocutory judgment be [107] entered in favor of said petitioner or Merced Irrigation District, confirming said plan of composition. That said cause and proceeding is pending in said Superior Court and involves identically the same matters and facts alleged in the petition in this proceeding. That under the provisions of said California Statutes of 1937, Chapter 4, and of Section 19 of said chapter, the plan of composition sought to be enforced in that proceeding and in the present proceeding became binding upon and as to the petitioner, Merced Irrigation District, and the Reconstruction Finance Corporation, and became binding upon said parties prior to the commencement of this proceeding, and said Reconstruction Finance Corporation is not a creditor affected by

this proceeding nor by the alleged plan of composition herein.

That said Reconstruction Finance Corporation accepted the plan of composition therein referred to several years ago, and that under the terms of California Statutes of 1937, Chapter 4, Section 19, said Reconstruction Finance Corporation and petitioner were bound by said plan of composition prior to the commencement of this proceeding and thereby said corporation is not affected by the plan referred to in this proceeding.

X.

As a third and separate defense to said petition, these answering respondents allege:

That said proposed plan of composition or readjustment discriminates unfairly against respondents, is inequitable and unjust, and does not comply with the terms of Chapter 10 of the Bankruptcy Act for the reason that Reconstruction Finance Corporation is not a bona fide creditor of petitioner and is not a creditor affected by the plan of readjustment at all, in that it has simply loaned to petitioner sufficient moneys to pay petitioner's bond obligations at 51.525 cents on the dollar, and the bond [108] obligations which it now purports to hold, and which petitioner alleges that it holds, are bond obligations deposited, received, and held pursuant to the same plan of composition, and therefore, to the extent of the said bond obligations which said Reconstruction Finance Corporation purportedly holds, said plan of composition and readjustment has been fully and

completely executed and effected and said bond obligations are no longer affected by said plan. That any holding of said bond obligations and allegations as to their being affected by said plan is a fiction and only for the purpose of forcing said plan upon respondents. That any purported consent of the Reconstruction Finance Corporation to said plan of composition and readjustment is void and not within the terms or purview of Chapter X of the Bankruptcy Act.

XI.

As a fourth and separate defense to said petition, these answering respondents allege:

That the said plan of composition proposed in said petition is inequitable, unjust, and unfair to these respondents in that it proposes to force respondents to surrender and deliver up their bonds and interest coupons for a small fraction of the face value thereof, and without any other consideration therefor, while at the same time the petitioner, by the exercise of reasonable diligence, is and will be financially able to pay the obligations so owned by respondents in full and according to their terms. That petitioner has a full and complete remedy under terms and provisions of California Irrigation District Act, whereby petitioner is not required to make annual assessments beyond and above ability of landowners to pay.

XII.

As a fifth and separate defense to said petition, these answering respondents allege: [109]

That the debts of petitioner sought to be readjusted in this proceeding are not the only debts or obligations which are, in effect, liens upon the lands within the boundaries of petitioner, but these answering creditors are informed and believe, and upon such information and belief allege, that there are within the boundaries of petitioner three or more incorporated cities, three or more drainage districts, and numerous school districts, each owing bonded indebtedness, and that in addition thereto, there are certain road districts owing bonded indebtedness, each an obligation of the owners of the lands, or of the land, within the respective cities and districts, and each similar to the obligations of the same lands or the owners thereof to the bonded debt of petitioner involved in these proceedings, and that in addition to said public debts these answering creditors are further informed and believe, and upon such information and belief allege that more than half of the lands within the petitioner are mortgaged or held under deeds of trust as security for private debts of the respective owners thereof, and that these other and additional debts and obligations, public and private, aggregate large sums of money, in excess of \$5,000,000.00; that at least a portion of said other and additional debts and obligations are, as a matter of law, junior to the bonds of petitioner sought to be readjusted in these proceedings; that the bonds of Merced Irrigation District, therefore, constitute only one of the obligations against said lands and the owners thereof; that said

plan of readjustment set out in said petition does not contemplate any readjustment of any such other and additional debts and obligations; and that these answering creditors are informed and believe, and upon such information and belief allege, that no other proceeding has been commenced or is contemplated to readjust such other and additional debts or obligations, or any of them; that said plan [110] of readjustment set out in the petition filed herein is unfair, inequitable, and not for the best interests of the creditors of petitioner, and that said plan discriminates unfairly in favor of the owners of bonds of said cities, drainage, school and road districts within the boundaries of Merced Irrigation District, and discriminates unfairly in favor of the holders of mortgages and the beneficiaries under deeds of trust securing private debts upon lands within the boundaries of petitioner.

XIII.

As a sixth and separate defense to said petition, these answering respondents allege:

That the proposed plan of readjustment is unfair, inequitable and unjust for the further reason that it purports to provide that the Reconstruction Finance Corporation shall receive bonds payable over a period of years at a rate of interest in exchange for the obligation owed by said Reconstruction Finance Corporation, and that such bonds shall be issued in the full amount of the outstanding indebtedness of the said Reconstruction Finance Corporation, whereas as to respondents it provides that

they shall receive not bonds but cash, and that such cash shall be at the rate of approximately 51¢ of the principal of the indebtedness due respondents, with nothing on account of accrued interest thereon, which at this time amounts to from \$250.00 to \$300.00 per \$1000.00 bond, in addition to the principal amount due.

XIV.

As a seventh and separate defense to said petition, these answering respondents allege:

Hundreds of thousands of dollars, the exact amount of which is unknown to these respondents, but which is not less than \$1,000,000.00, has been wrongfully and unlawfully diverted by the petitioner and its officers to the prejudice of the property [111] rights and interests of these respondents in that said funds were trust funds belonging to these respondents and other bondholders of said district, and which said trust funds have been unlawfully applied to objects and purposes other than the said trust purposes, and in particular that said trust funds have been paid to and applied upon obligations other than obligations due the beneficiaries and trustees of said trusts, to-wit; respondents and other bondholders of the same class, and that said plan is unjust, unfair and inequitable in that it prevents respondents from pursuing said funds and deprives them of the benefit thereof and will deprive these respondents of further trust funds and properties belonging to these respondents as beneficiaries, contrary to the law and equity, and

consisting of moneys in the hands of the petitioner, tax certificates, real and personal property, and the right to compel the governing bodies of said petitioner, to-wit: its Board of Directors and the Board of Supervisors of Merced County, California, to levy assessments for the payment of the obligations due respondents.

XV.

As an eighth and separate defense to said petition, these answering respondents allege:

That the payment of assessments or other charges by the land owners to Merced Irrigation District, and particularly that portion of the assessments or other charges of said district required for the retirement of said bonds as they mature, constitutes but a small fraction of the annual costs of the land owners in the production and marketing of farm commodities upon and from said lands; that the total annual cost for the payment of interest on the bonded debt of said district at the present time, without considering defaulted obligations, does not exceed an average of [112] \$2.00 per acre, whereas these respondents are informed and believe, and upon such information and belief allege, that the total average farming and marketing cost per acre per annum for all purposes is in excess of \$40.00.

That with a portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings and described in the petition herein, the petitioner installed large hydro-electric power works and owns and operates said works and sells, under

long term contract, electric energy generated at said works; that respondents are informed and believe, and upon such information and belief allege, that petitioner will receive from the sale of said electric energy over and above the cost of operating said hydro-electric power works a net average annual income in excess of \$450,000; that upon the same ground respondents allege that the average cost of operation and maintenance of all works of petitioner, other than hydro-electric power works, will not exceed \$350,000 per year, and that the surplus of power revenue over and above the said cost of operation and maintenance will apply in reduction of the amounts necessary to be raised for the purpose of paying interest upon and retirement of the said bonds of petitioner, and that the remaining portion of interest upon and retirement of the said bonds of petitioner, after said application of power revenue, will constitute the only sums for which the petitioner will be required to raise funds by assessment or otherwise; that if the total annual bonded debt requirement after the application of power revenue as aforesaid were as of the present date waived or eliminated, the actual saving to the individual land owner in his annual costs would be comparatively small. The proposed plan of readjustment set out in said petition provides for both reduction in principal and interest on said [113] bonded debt, and reduces the total obligation to the land owners by approximately 40% with a correspondingly small saving to the individual land owner in his total

annual costs. Notwithstanding the fact that the contemplated plan of readjustment set out in the petition will, if made effective, effect an actual annual saving to the individual land owners within the said district which would be comparatively negligible, it requires these answering creditors to immediately cancel and write off approximately 50% of its capital investment in the bonds of said district.

XVI.

As a ninth and separate defense, these answering respondents allege: ~

That if the plan of readjustment proposed in the petition herein is made effective, then these answering creditors are informed and believe, and upon such information and belief allege, that the revenue which petitioner will receive from the sale of hydro-electric energy, as aforesaid, will more than pay the entire bonded debt of petitioner, both principal and interest, leaving the annual cost of operation and maintenance of the irrigation and drainage works of petitioner only to be raised by petitioner by assessment or otherwise, which costs will constitute, as aforesaid, only a comparatively nominal charge upon the lands, and this, notwithstanding the fact that the major portion of the funds derived from the sale of the bonds of petitioner involved in these proceedings was used in the construction of storage and other irrigation works, without which irrigation on a large scale as now practiced in peti-

tioner, or dependable irrigation at all, would not be possible.

XVII.

As a tenth and separate defense, these answering respondents allege: [114]

That these respondents are informed and believe, and upon such information and belief allege, that farming conditions as to cost of production and marketing and prices of farm commodities have materially stabilized themselves since said plan was adopted and that petitioner is now and was when the petition was filed herein enabled, without undue burden upon the land owners therein, to meet the obligations represented by the bonds of said district, including those owned by these respondents as aforesaid; that it is unfair, inequitable and unjust to cancel and annul 50%, or thereabouts, of the capital investment of respondents in the bonds of said district, with no provision for reinstating said capital investment or recouping the loss thus sustained by respondents, when the said district and the land owners therein, through such improved economic conditions are enabled, without undue burden, to meet such obligations and pay said debt.

XVIII.

As an eleventh and separate defense, these answering respondents allege:

That on or about December 1, 1933, a committee of bondholders of said petitioner district agreed with the Board of Directors of said district upon a

plan of readjustment for all of the bonds of said petitioner district referred to in said petition; that thereafter said plan was submitted to the qualified electors of said petitioner district at an election duly called for that purpose, and was at said election approved by a very large majority, and the said petitioner district was by said electors at said election authorized to issue its refunding bonds for the purpose of carrying out said plan after the said plan had been submitted to and approved by the California District Securities Commission as required by law. Said plan provided for a substantial reduction in the total obligation of the said district; that respondents have approved and do now approve said plan of [115] December 1, 1933, are informed and believe, and upon such information and belief allege, that said plan is feasible and practicable, and is as fair, equitable and just to both the owners of bonds of petitioner and to said petitioner as any plan that can be devised, and will afford said petitioner sufficient relief to enable it to meet its obligations thereunder, without undue burden.

XIX.

As a twelfth and separate defense, these answering respondents allege:

That of the debts alleged in paragraph III of said petition, to aggregate in principal amount \$16,190,000.00, approximately \$14,640,000 in principal amount thereof, together with a substantial sum of interest accrued thereon, has been paid on the basis

of approximately 51.50 cents on the dollar, with funds derived from a loan to said district from Reconstruction Finance Corporation, and that said district is not indebted upon the bonds so paid in any amount, but that said district is indebted to Reconstruction Finance Corporation for the amount of said loan aggregating approximately \$8,000,000, which obligation is evidenced by contract or contracts between said district and said Reconstruction Finance Corporation, and payable over a period of years with interest at 4% per annum, payable semi-annually, and will eventually be evidenced by re-funding bonds of said district in the amount of said loan; that respondents are further informed and believe, and upon such information and belief allege that Reconstruction Finance Corporation is not the owner of the bonds so paid, or retired, or alleged to have been purchased with funds derived from said loan, but that said bonds so paid, retired or alleged to have been purchased are in legal effect paid and cancelled, and that if it should be found as a matter of law that said bonds so paid, retired or purchased with funds derived from [116] said loan are in legal effect still in existence as obligations of said district and held by Reconstruction Finance Corporation, then respondents are informed and believe, and upon such information and belief allege that said bonds are so held by Reconstruction Finance Corporation as collateral only, and that said district is not obligated thereon in excess of its loan

from Reconstruction Finance Corporation and the interest thereon.

XX.

As a thirteenth and separate defense to said petition, respondents are informed and believe, and upon such information and belief allege:

That Reconstruction Finance Corporation is not the holder or owner of bonds of Merced Irrigation District at all, but that Merced Irrigation District is indebted to Reconstruction Finance Corporation upon contract, or contracts, representing a loan from Reconstruction Finance Corporation, and refunding bonds of petitioner have already been authorized by the petitioner for delivery to Reconstruction Finance Corporation, to represent said loan in the principal amount of approximately \$8,338,000 and that it is not proposed by said plan of readjustment of debts that the debt to Reconstruction Finance Corporation will be in any manner changed or readjusted; and that upon the same grounds respondents allege that the only outstanding bonds of the petitioner aggregate the principal amount of approximately \$1,550,000, and that these are the only bonds affected or proposed to be changed by said proposed plan of debt readjustment; that the bonds owned and held by respondents hereinabove alleged are a part of said aggregate of \$1,550,000 in principal amount of bonds sought to be affected or readjusted by said plan, and that none of the holders or owners of said bonds so sought to be adjusted or affected by said plan have consented

in writing or otherwise thereto; that respondents [117] are informed and believe, and upon such information and belief allege that the debt to respondents and others standing in a similar position represents an entirely different class of debt from that owing to Reconstruction Finance Corporation and that two-thirds of the principal amount of each class of indebtedness affected by this plan have not accepted said plan in writing or by contract or otherwise, and that if said plan of debt readjustment is approved and made effective, the debt to Reconstruction Finance Corporation will not be affected thereby, but that Reconstruction Finance Corporation will actually benefit thereby.

XXI.

As a fourteenth and separate defense to said petition, these answering respondents allege:

That Merced Irrigation District is a subdivision and governmental agency of the State of California and neither it nor its obligations are subject or amenable to the bankruptcy power of the Congress of the United States. That the State of California has not consented, nor can it consent, to this proceeding by petitioner in bankruptcy or for composition of debts. That any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Ex. Sess.), Chapter 4, is unconstitutional and void in that said chapter violates the provisions of Article I, Section 16; Article IV, Section 1; Article X,

Section 5, Article XIII, Section 6, and Article I, Section 21 of the Constitution of the State of California, and Article I, Section 10 of the Constitution of the United States, and is otherwise unconstitutional and void.

XXII.

As a fifteenth and separate defense to said petition, these answering respondents allege:

That Chapter X of the Bankruptcy Act of the United [118] States is unconstitutional and void in that it violates Article I, Section 10, Clause 1, and the Fifth and Tenth Amendments, of the Constitution of the United States.

Wherefore, respondents pray that petitioner take nothing by its alleged petition; that said petition and these proceedings be dismissed, and that respondents recover their costs.

W. COBURN COOK,

Attorney for the respondents
Milo W. Bekins and Reed J.
Bekins as trustees appointed
by the Will of Martin Bekins,
deceased, et al.

State of California,
County of Stanislaus—ss.

Gilbert Moody, being duly sworn, deposes and says:

That he is one of the respondents named in the foregoing answer and is one of the answering respondents therein; that he has read said answer and knows the contents thereof, and that the same is

true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

GILBERT MOODY.

Subscribed and sworn to before me this 22nd day of September, 1938.

[Seal] S. H. HACKETT,

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Answer and Objections of Milo W. Bekins, et al. Filed Sep. 23, 1938. [119]

At a stated term, to-wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday, the 10th day of October, in the year of our Lord one thousand nine hundred and thirty-eight.
Present:

The Honorable: Geo. Cosgrave, District Judge.

[Title of Cause.]

This matter coming on for hearing on proceedings for confirmation of a Plan of Composition of Bond indebtedness, filed September 1, 1938; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; and Geo. Clark, Esq., appearing for Mary E. Morris:

It is ordered that the cause be, and it hereby is, continued to November 14, 1938, for the said hearing. [120]

At a stated term, to-wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Thursday, the 13th day of October, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Geo. Cosgrave, District Judge.

[Title of Cause.]

(The Following Order Is Made Nunc Pro Tunc,
October 10th, 1938)

Upon motion of counsel for respondents, W. C. burn Cook, Esq., there being present in court and consenting to the making of the motion, counsel for the petitioner, it is ordered that a hearing be had upon the question of whether the Reconstruction Finance Corporation is a creditor affected materially by the plan of composition in this cause on November 14th, 1938, and that notice be given by the clerk by mail, to the Reconstruction Finance Corporation and that they appear at said hearing when the issue will be determined by the Judge.

[121]

[Title of District Court and Cause.]

To the Reconstruction Finance Corporation, Washington, D. C.:

You will please take notice that a controversy having arisen as to whether you are a creditor of the above entitled petitioner whose claim is or shall be affected by the proposed plan of composition.

You are hereby notified and directed to appear at a hearing to be held on November 14, 1938, at 10 o'clock A. M., of that day before the above entitled Court at the Courtroom thereof in the Post Office Building, City of Fresno, County of Fresno, State of California at which time and place the said issue will be determined by the Judge of the above entitled Court.

Witness the Honorable George Cosgrave, United States District Judge with the seal of the Court annexed this 15th day of October, A. D. 1938.

[Seal]

R. S. ZIMMERMAN,

Clerk.

Attest:

FRANCIS E. CROSS,

Deputy Clerk.

Mailed to Reconstruction Finance Corporation, Washington, D. C. 10/15/38.

FRANCIS E. CROSS,

Deputy Clerk. [122]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday the 31st day of October, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Geo. Cosgrave, District Judge.

[Title of Cause.]

This matter being on the calendar for hearing at Fresno for Monday, November 14th, 1938, on proceedings for confirmation of a Plan of Composition of Bond Indebtedness, filed September 1st, 1938, it is by the court ordered that said matter be, and it is hereby, postponed to November 21st, 1938, for hearing; and this matter being also on the calendar for November 14th, 1938, for hearing upon the question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition, pursuant to minute order of October 13th, 1938, nunc pro tunc, October 10th, 1938, it is by the Court ordered that when said question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition is called on November 14th, 1938, at Fresno, that it be also continued to November 21st, 1938, for hearing at Fresno; and that all witnesses present on Nov. 14, 1938, be notified in open court to appear on November 21st, 1938, without the necessity of counsel being present. [123]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday, the 14th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

This matter coming on for hearing upon the question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition, pursuant to minute order of October 13th, 1938, nunc pro tunc October 10, 1938; and the parties having so stipulated, it is ordered that the said hearing be continued to Nov. 21st, 1938, and that any witnesses who may be present appear in court at that time. [124]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the 15th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on motion of Frank J. Keenan, chief of the Division of Drainage, Levees, and Irrigation Districts of the Reconstruction Finance Corporation, to quash subpoena duces tecum, etc., pursuant to stipulation now presented and ordered filed; Stephen W. Downey, Esq., appearing for the Debtor; Lucius F. Chase, Esq., appearing for R. D. Crowell and Belle Crowell; Irl D. Brett and Leo V. Silverstein, Assistant U. S. Attorneys, appearing for Frank J. Keenan, Chief of Drainage, Levees, and Irrigation Division of the Reconstruction Finance Corporation; and H. A. Dewing being present as court reporter and reporting the proceedings; at 10:30 o'clock A. M. both sides answering ready.

Attorney Silverstein makes a statement in support of the said motion and Attorney Downey makes a statement in support of the said motion. At 10:55 o'clock A. M. Attorney Chase argues in opposition to the said motion. And, at 11:44 o'clock A. M. Attorney Downey makes closing statement. Whereupon,

It is ordered that motion to quash subpoena duces tecum be granted on the grounds of not being specific and being oppressive and on the further understanding and stipulation of counsel that Attorney

Chase may be permitted to inspect files and documents and make copies thereof at the office of the District at Merced, California, on November 19, 1938, at 9 o'clock A. M. [125]

[Title of District Court and Cause.]

STIPULATION

It is stipulated between the petitioner and counsel for James Irvine and other respondents who may appear in this cause, that respondent creditors appearing in this cause may comply with the provisions for filing claims by attaching to verified answer that may be filed in this cause, statements of the claims of such respondent creditors, and that it will be sufficient if such answers are verified by one of the respondent creditors.

Dated this 27th day of July, 1938.

W. COBURN COOK,

Attorney for Certain
Respondents.

HUGH K. LANDRAM,

C. RAY ROBINSON,

STEPHENS W. DOWNEY,

Attorneys for Petitioner.

[Endorsed]: Stipulation Filed Nov. 21, 1938.

[126]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday, the 21st day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on (1) question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) Confirmation of Plan of Composition of bond indebtedness, etc., filed September 1, 1938; Stephen W. Downey, C. Ray Robinson, and Hugh K. Landram, Esqs., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al; L. F. Chase, Esq., appearing for R. D. & Belle Crowell; George Clark, Esq., appearing for Mary E. Morris; Chas. L. Childers, Esq., appearing for the West Coast Life Insurance Company; Peter tum Suden, Esq., appearing for Minnie E. Rigby, et al.; Newell J. Hooey, Esq., appearing for the Pacific National Bank of San Francisco; David Friedenrich, Esq., appearing for Claire S. Strauss; Robert H. Walker, Esq., appearing for Florence Moore, et al.; and Ross Reynolds and A. H. Bargion being present as court reporters and reporting the proceedings:

On motion of Attorney Chas. L. Childers it is ordered that Robert H. Walker and David Friedrich, Esqs., be, and they are, admitted to practice in this Court for the purpose of this proceeding.

At 10:05 o'clock a. m. Attorney Downey makes opening statement of the case.

At 11 o'clock a. m. Court recesses. At 11:10 o'clock a. m. Court reconvenes, all being present as before.

Attorney Cook makes a statement in behalf of respondents, [127] and certain stipulation is entered into between counsel re status of claims filed by respondents, as reflected by the reporters' notes, and it is so ordered.

Attorney Cook now makes opening statement in behalf of the respondents of the issues herein.

At 11:45 o'clock a. m. Attorney Chase makes a statement re proof to be adduced as to the issues on (1).

At 12:20 o'clock p. m. Attorney Clark makes a statement; at 12:25 o'clock p. m. Attorney Childers makes a statement; at 12:28 o'clock p. m. Attorney Hooey makes a statement; and at 12:35 o'clock p. m. it is ordered that the matter be hereby continued until 2 o'clock p. m.

At 2:03 o'clock p. m. Court reconvenes, and all being present as before it is ordered that the hearing proceed.

Attorney Clark makes a statement and Attorney Downey makes a statement. The following exhibits are offered and admitted in evidence:

Petitioner's Ex. 1—Copy of Resolution of R. F. C. dated 11/14/34, and certain portions therefrom are read.

Petitioner's Ex. 2—Copy of Resolution of Merced Irrigation District dated 12/11/.....

Petitioner's Ex. 3—Copy of Resolution of Merced Irrigation District, adopting refunding Plan.

Petitioner's Ex. 4—Amendatory Resolution, dated 7/6/35.

Petitioner's Ex. 5—Amendatory Resolution, dated 9/18/35.

Petitioner's Ex. 6—Copy of Resolution of Merced Irrigation District, dated 7/23/35.

Petitioner's Ex. 7—Copy of Resolution of Merced Irrigation District, dated 9/18/35.

Petitioner's Ex. 8—Copy of Bond purchase contract dated 9/16/35.

Petitioner's Ex. 9—Copy of Agreement, dated 8/14/35.

At 3:15 o'clock P. M. Court recesses. At 3:25 o'clock P. M. Court reconvenes with all present as before.

D. B. Atkins is called, sworn, and testifies on direct examination by Attorney Downey, and the following exhibits are offered and admitted in evidence: [128]

Petitioner's Ex. 10—Copy of letter, dated 9/19/35 R. F. C. to Federal Reserve Bank.

Petitioner's Ex. 11—Twenty-two (22) photostatic copies of "Memo of Sale and Receipt".

It is stipulated and ordered that Attorney Peter tum Suden may be excused from further attendance.

At 4:45 o'clock P. M. Court adjourns until 10 o'clock A. M., November 22, 1938, for further hearing. [129]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Tuesday, the 22nd day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for (1) Further hearing on question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) Further hearing on Confirmation of Plan of Composition of bond indebtedness, etc., filed Sept. 1, 1938; Stephen W. Downey, C. Ray Robinson and Hugh K. Landram, Esqs., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; L. F. Chase, Esq., appearing for R. D. and Belle Crowell; George Clark, Esq., appearing for Mary D. Morris; Chas. L. Childers, Esq., appearing for West Coast

Life Insurance Company; Newell J. Hooey, Esq., appearing for Pacific National Bank of San Francisco; David Freidenrich, Esq., appearing for Claire S. Strauss; Robert K. Walker, Esq., appearing for Florence Moore, et al; Ross Reynolds and A. H. Bargion being present as official court reporters; it is ordered that the hearing proceed, whereupon,

D. B. Atkins resumes the stand and testifies further on direct examination by Attorney Downey, the following exhibit being admitted in evidence:

Resp. Ex. A: 3-page document (draft-memo and statement); and the witness being cross-examined by Attorney Clark, the following exhibits are admitted in evidence:

Petr's Ex. 12: Form letter of transmittal;

“ Ex. 13: Form letter (2/15/35)

Resp Ex. B: Form letter dated 1/7/35 with questionnaire attached;

Resp “ C: “ “ “ 1/10/35; [130]

Petr's Ex. 14: Certified copy of Judgment Roll, Case No. 10841, Sup. Ct., County of Merced;

“ “ 15: Copy of Resolution, dated 5/31/38;

“ “ 16: Copy of Acceptance of Plan, 6/9/38.

E. E. Neel is sworn and testifies on direct examination by Attorney Downey, is cross-examined by Attorney Childers, is examined by Attorney Clark, and the following exhibit is admitted in evidence:

Resp. Ex. D: List of Interest payments.

At 12:10 P. M. a recess is declared at 2 o'clock P. M. at which time court reconvenes, and all being present as before,

E. E. Neel resumes the stand and testifies further on examination by Attorney Clark, the following exhibit being admitted in evidence:

Resp. Ex. E: List of Interest payments to 6/21/38; and the witness being examined by Attorneys Friedenrich and Chase, the following exhibits are offered and admitted in evidence:

Resp. Ex. F: Letter, dated 10/21/38;

“ “ G: Copy of letter dated 11/3/38;

“ “ H: Letter dated 11/10/38;

“ “ I: Balance Sheet “Exh. A” ending 6/30/35;

“ “ J: Statement, ending 12/31/37;

“ “ K: “ “ 6/30/38;

“ “ L: 3 letters, dated 3/8/38, 3/22/38 and 4/7/38;

“ “ M: Copy of letter, 6/24/38, with “Exh. A” attached;

“ “ N: “ “ “ 7/3/37 (confirmation); and Attorney Cook now reads certain minutes into the record; whereupon, the following exhibit is marked for identification:

Resp. Ex. O for Idtf: Copy of printed record on appeal #8165 (No. 3907-Bkey); and the following exhibits are admitted in evidence:

Resp. Ex. P: Page 10—Petition (3907);

“ “ Q: “ 228—Findings of Fact, etc. (3907);

Resp. Ex. R: Page 275—Final Decree (3907);

“ “ S: Copy of Resolutions Adopting Cash Offer Plan;

“ “ T: Copy of Petition, case No. 11675;

“ “ U: Copy of Resolution accepting Plan;

“ “ V: Copy of Acceptance of Plan #11675 (7/13/37); [131]

Resp. Ex. W: Printed copy of notice to creditors #11675.

At 3:30 P. M. court recesses, reconvening at 3:40 P. M., and all being present as before, Attorney Cook reads certain testimony into the record; Attorney Downey makes a statement, and the following exhibit is admitted in evidence:

Petr's Ex. 17: Certified copy of Complaint #11604, Sup. Ct. of Merced County.

Attorney Downey reads certain documents from case No. 3907 Bkey. into the record herein, and the following exhibits are admitted in evidence:

Petr's Ex. 18: Copy of Resolution dated 6/15/37;

“ “ 19: Letters, dated 8/24/38.

At five o'clock P. M. the Court orders a recess herein to Nov. 23, 1938, at 9:30 A. M. for further hearing. [132]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Wednesday the 23rd day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for further hearing on (1) question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) on Confirmation of the Plan of Composition of bond indebtedness, etc., filed September 1, 1938; Messrs. Downey, Brand, and Seymour by Attorney Downey, C. Ray Robinson, and Hugh K. Landram, Esq., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; L. F. Chase, Esq., appearing for R. D. and Belle Crowell; George Clark, Esq., appearing for Mary E. Morris; Chas. L. Childers, Esq., appearing for the West Coast Life Insurance Co.; Newell J. Hooey, Esq., appearing for the Pacific National Bank of San Francisco; David Friedrich, Esq., appearing for Claire S. Strauss; Robert H. Walker, Esq., attorney for Florence Moore, et al. being excused for this day; Ross Reynolds and A. H. Bargion being present as court

reporters and reporting the proceedings; at 9:30 o'clock A. M. Court reconvenes in this matter, and all being present as before it is ordered that the hearing proceed:

The following exhibits are offered and admitted in evidence:

Petitioner's Ex. 20—Letter, dated 7/1/38,

Petitioner's Ex. 21—Copies of twenty letters and telegrams.

Attorney Cook now moves to dismiss the said petition, whereupon, it is ordered that the petition be, and it is, denied without prejudice at this time.

[133]

E. E. Neel resumes the stand and testifies further on direct examination by Attorney Downey, and the following exhibits are offered and admitted in evidence:

Petitioner's Ex. 22—Statement of tax rate under Sec. 39, Irrig. Dist. Act,

Petitioner's Ex. 23—Graphic Chart showing tax rates,

Petitioner's Ex. 24—Graphic Chart showing bond issue,

Petitioner's Ex. 25—Statement of Delinquent tax rolls,

Petitioner's Ex. 26—Balance Sheet, period ending 11/1/38,

Petitioner's Ex. 27—Statement of Power for years 1926 to 1938,

Petitioner's Ex. 28—List of properties deeded to District.

At 10:50 o'clock A. M. Court recesses. At 11:04 o'clock A. M. Court reconvenes with all present as before.

E. E. Neel resumes the stand and testifies further on cross examination by Attorney Clark, and the following exhibits are offered and admitted in evidence:

Petitioner's Ex. 29—Report year 1933 (District Sec. Comm'r's Act,

Petitioner's Ex. 30—Report year 1934 (District Sec. Comm'r's Act,

Petitioner's Ex. 31—Report year 1935 (District Sec. Comm'r's Act,

Petitioner's Ex. 32—Report year 1936 (District Sec. Comm'r's Act,

Petitioner's Ex. 33—Report year 1937 (District Sec. Comm'r's Act,

Petitioner's Ex. 29a—Approval by Dist. Sec. Comm'r's for year 1933,

Petitioner's Ex. 30a—Approval by Dist. Sec. Comm'r's for year 1934,

Petitioner's Ex. 31a—Approval by Dist. Sec. Comm'r's for year 1935,

Petitioner's Ex. 32a—Approval by Dist. Sec. Comm'r's for year 1936,

Petitioner's Ex. 33a—Approval by Dist. Sec. Comm'r's for year 1937.

Respondent's Ex. X—Annual statements of Financial Condition for years 1931-1937 (seven in all).

At 12:20 o'clock P. M. Court recesses until 2 o'clock P. M.

At 2:05 o'clock P. M. Court reconvenes, and all being present as before, it is ordered that the hearing proceed.

E. E. Neel resumes the stand and testifies further on cross examination by Attorney Clark and on cross examination by Attorneys Cook, Chase, Fried-enrich, and Childers, respectively.

At 3:30 o'clock P. M. Court recesses. At 3:40 o'clock P. M. Court reconvenes with all present as before. [134]

Attorney Downey makes a statement and reads certain portion of a preamble of a certain State Act known as "Downey Act" into the record. The following exhibit is offered and admitted in evidence:

Petitioner's Ex. 34—Page 24 of Booklet "The Agricultural Situation Oct. 1938".

Attorney Robinson reads certain testimony of Murray R. Benedict to the Court, and the following exhibit is offered and admitted in evidence:

Petitioner's Ex. 35—Preliminary Report by M. R. Benedict.

At 4:35 o'clock P. M. Court recesses. At 4:45 o'clock P. M. Court reconvenes with all present as before, whereupon the following exhibit is offered and admitted in evidence:

Petitioner's Ex. 36—Transcript of testimony of M. R. Benedict.

G. A. Momberg is called, sworn, and testifies on direct examination by Attorney Robinson and on cross examination by Attorneys Chase and Cook.

At 5:45 o'clock P. M. Court recesses in this matter until November 25, 1938, at 9 o'clock A. M. for further hearing. [135]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Friday, the 25th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for further hearing on (1) question of whether the Reconstruction Finance Corporation is a creditor affected materially by the Plan of Composition herein, and (2) Confirmation of Plan of Composition of bond indebtedness, etc., filed September 1, 1938; Stephen W. Downey, C. Ray Robinson, and Hugh K. Landram, Esqs., appearing for the Debtor; W. Coburn Cook, Esq., appearing for Milo J. Bekins, et al.; L. F. Chase, Esq., appearing for R. D. and Belle Crowell; George Clark, Esq., appearing for Mary E. Morris; Chas. L. Childers, Esq., appearing for the West Coast Life Insurance Co.; Newell J. Hooey, Esq., appearing for the Pacific National Bank of San Francisco; David

Freidenrich, Esq., attorney for Claire S. Strauss, being excused for this day; and Robert H. Walker, Esq., attorney for Florence Moore, et al., being excused for this day; and Ross Reynolds and A. H. Bargion being present as court reporters and reporting the proceedings; at 9 o'clock A. M. Court reconvenes herein, and all being present as before, it is ordered that the hearing proceed.

G. A. Momberg resumes the stand and testifies further on direct examination by Attorney Robinson and on cross examination by Attorneys Chase, Childers, and Clark:

At 10:30 o'clock A. M. Attorney Landram reads the testimony of B. P. Lester to the Court and the same is marked Petitioner's Ex. 36-A. The following exhibit is offered and admitted in evidence:

[136]

Petitioner's Ex. 37—Letter, dated 12/15/33 (Bondholders Protective Committee).

Attorney Cook reads certain portion of testimony of B. P. Lester to the Court, and the following exhibit is offered and admitted in evidence:

Respondent's Ex. Y—List of bonds held by individual members of the Committee.

H. P. Sargent is called, sworn, and testifies on direct examination by Attorney Downey and on cross examination by Attorneys Childers and Clark. The following exhibit is offered and admitted in evidence:

Petitioner's Ex. 38—Pages 333 to 339 inclusive of Ex. O For Ident.

At 12 o'clock noon the Petitioners rest, and Court recesses until 2 o'clock P. M. At 2 o'clock P. M. Court reconvenes, and all being present as before,

E. E. Neel, resumes the stand and testifies further on examination by Attorney Chase, and the following exhibits are offered and admitted in evidence:

Respondent's Ex. Z—Copy of Balance Sheet No. 1 (11/1/38),

Respondent's Ex. AA—Copy of Balance Sheet No. 6,

Respondent's Ex. BB—Four (4) trade sheets "Elworthy & Co."

Attorney Clark moves to strike Petitioner's Ex. 9, but the said motion is denied; and Attorney Clark also moves to strike Petitioner's Ex. 6, but the said motion is denied, and exception noted.

E. E. Neel resumes the stand and testifies further on direct examination by Attorney Chase, and the following exhibit is offered and admitted in evidence:

Respondent's Ex. CC—Copy of Balance Sheet No. 5.

Attorney Childers offers testimony of Carl A. Heinze from transcript, page 290 and reads the same to the Court. The following exhibits are offered and admitted in evidence:

Respondent's Ex. DD—Study of Power Plant 1902-1935,

Respondent's Ex. DD-1—Study of Power Plant 1902-1938.

Attorney Childers reads testimony of Louis C. Hill from transcript, page 327. The following exhibits are thereupon offered and admitted in evidence: [137]

Respondent's Ex. EE—Copy of Contract, dated 2/21/24,

Respondent's Ex. FF—Copy of Map (re Ex. No. 24),

Respondent's Ex. GG—Sheet re "Matured Bonds",

Respondent's Ex. HH—Report, dated 2/15/35,

Respondent's Ex. II—Copy of Map of Merced County,

Respondent's Ex. JJ—Printed Table Taxes and Assessments,

Respondent's Ex. KK—Statement re bonds,

Respondent's Ex. LL—Statement re extracts from Tax Reports 1929-1936,

Respondent's Ex. MM—Petition in Case No. 3907-Bkey.

Respondent's Ex. NN—Pages 41 to 54 of Ex. O For Ident.,

Respondent's Ex. OO—Pages 283-339 of Ex. O For Ident.,

Respondent's Ex. O—Being the exhibit formerly marked for Identification.

Respondent's Ex. PP—Mandate, Case No. 3907-Bkey.,

Respondent's Ex. QQ—Copy of Decree of Dismissal, Case No. 3907-Bkey.,

Respondent's Ex. RR—Copy of Bulletin No. 21 (1929),

Respondent's Ex. SS—Copy of Minute Order 10/25/37,

Respondent's Ex. TT—Copy of Petition in Intervention, Case No. 11,604, Superior Court, County of Merced,

Attorney Cook reads testimony of George F. Covell to the Court, and the following exhibits are offered and admitted in evidence.

Respondent's Ex. UU—Bulletin No. 21-H (1936),

Respondent's Ex. VV—Copy of Report of District to R. F. C.

Attorney Childers reads testimony of J. Alfred Swenson to the Court from Reporter's transcript, page 345, and the following exhibits are offered and admitted in evidence:

Respondent's Ex. WW—Copy of Chart of Bondholders' Loss,

Respondent's Ex. XX—Copy of Table II,

Respondent's Ex. YY—Excerpts of Bulletin 34,

Respondent's Ex. ZZ—Copy of Table I, II & V,

Respondent's Ex. AAA—Copy of extracts of soil survey.

At 4:55 o'clock P. M. the Respondents rest. Attorney Cook moves to dismiss Petition and Attorney Hooey moves to strike, and the said motions are denied.

At 5:10 o'clock P. M. it is ordered that the case be submitted and that the matter be hereby continued to November 30, 1938, at 9 o'clock A. M. for argument. [138]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno on Wednesday the 30th day of November in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 4818-Bkey.

In the Matter of

MERCED IRRIGATION DISTRICT

Debtor.

No. 4575-Bkey.

In the Matter of

LINDSAY-STRATHMORE
IRRIGATION DISTRICT,

Debtor.

No. 4632-Bkey.

In the Matter of

JAMES IRRIGATION DISTRICT,

Debtor.

No. 4633-Bkey.

In the Matter of

RECLAMATION DISTRICT No. 1606,

Debtor.

The above entitled matters coming on at this time for consolidated argument, and counsel appearing as follows: (in No. 4818) Stephen W. Downey, C. Ray Robinson and Hugh K. Landram, Esqs., for the Debtor; Chas. L. Childers, Esq., for West Coast Life Insurance Co.; Newell J. Hooey, Esq., for Pacific National Bank of San Francisco; Peter tum Suden, Esq., for Minnie E. Rigby, et al.; W. Coburn Cook, Esq., for Milo J. Bekins, et al.; L. F. Chase, Esq., for R. D. and Belle Crowell; George Clark, Esq., for Mary E. Morris; David Freidenrich, Esq., for Claire S. Strauss; and * * * and A. H. Bargion being present as official court reporter, and it is ordered that the argument proceed, whereupon, * * *

At 5:30 P. M. the arguments are closed, and it is ordered that all parties may have five days to file any points and authorities; and it is ordered that the four above entitled cases now stand submitted [139] for decision.

[Title of District Court and Cause.]

STIPULATION

It appearing that through inadvertence on the part of W. Coburn Cook, attorney for F. F. G. Harper and W. S. Jewell, creditors of the Merced Irrigation District, their names and claims were not included in the answer and claims filed by said counsel for his other clients in this cause.

It is stipulated that F. F. G. Harper and W. S. Jewell are the owners of bonds of the original issue of said district with attached coupons in the principal amounts as follows: F. F. G. Harper, \$1000.00, W. S. Jewell, \$5000.00, and they may be deemed to have appeared and answered the petition herein and to have adopted the answer of Milo W. Bekins, et al, in this cause and that they may deem to have appeared at the hearing of the petition subject to the evidence produced, objections, ruling and exceptions at said hearing.

W.-COBURN COOK,
Attorney for F. F. G. Harper and
W. S. Jewell.

HUGH K. LANDRAM,
C. RAY ROBINSON,
STEPHEN W. DOWNEY,
Attorneys for Merced Irrigation
District.

[Endorsed]: Stipulation Filed Dec. 19, 1938.

[140]

[Title of District Court and Cause.]

ORDER

The foregoing stipulation is approved and it is ordered that F. F. G. Harper and W. S. Jewell, creditors of the above named district, be deemed to have appeared and answered the petition herein and to have adopted the answer of Milo W. Be-

kins, et al, and to have appeared at the hearing of the petition, subject to the evidence produced objections, rulings, and exceptions of said hearing.

Dated: December 19th, 1938.

PAUL J. McCORMICK,

U. S. District Judge.

[Endorsed]: Order Filed Dec. 19, 1938. [141]

[Title of District Court and Cause.]

RESPONDENTS' PROPOSED MODIFICATION
OF PLAN

In response to the suggestion of the Court that counsel for objecting creditors submit a proposed modification of the plan offered by the District, the undersigned counsel state that they have conferred together, and with their clients, and have agreed upon a modification which is believed to be fair and equitable to all parties and one which will finally terminate the case. Mr. Cook was unable to contact all of his clients, but he has conferred with a majority in amount who have agreed to this proposed modification. It is believed that substantially all of the respondents will agree to this proposal. [142]

We feel that in light of the evidence in this case, the plan proposed by the District is unfair and that the District could, without any undue burden, pay

upon its bond debt, a substantial sum in addition to the amount proposed. It is our opinion that a plan which will do absolute justice to all has been rendered almost impossible of accomplishment, not by any act of the respondents, but by the act of the Reconstruction Finance Corporation and the District in closing the escrow, so to speak, before the transaction with all bondholders was completed.

Without waiving any defenses, pleas, or bars which we have raised such as *res adjudicata*, jurisdiction, pendency of the state proceeding, that R. F. C. is not an owner, and that the R. F. C. is not materially affected by the plan, together with all other defenses raised and objections made, and without waiving the right to appeal, in the event a modification of the plan satisfactory to objecting creditors respectively represented by the undersigned is not made with the approval of the Court after hearing as provided for in the Act, accepted by petitioner, and otherwise made effective, we suggest as a means of accomplishing substantial justice as to respondents, after three trials and one appeal over the course of the last four years, that the plan be modified to enable each respondent severally to retain his original bonds, without change except that the interest therein called for be reduced to three (3%) per cent and the bonds stamped to such effect. The principal amount of the several original bonds to be paid in full to the holders thereof on the respective due dates, except

those that are now past due and such past due bonds to be severally paid in full within a reasonable time with interest at the rate of three (3%) per cent per annum from due date until paid.

The foregoing suggestion involves a reduction of the current charges of the District for interest on one and one-half million dollars principal amount of bonds held by respondents, which would [143] approximate a saving of Forty Thousand (\$40,000.00) Dollars per annum, and a cancellation of past due indebtedness of approximately one-half of the matured interest to date, or a cancellation of about Two Hundred Seventy-five Thousand (\$275,000.00) Dollars of such past due interest. The future savings to the District on interest for the life of the bonds will approximate Five Hundred Twenty Thousand (\$520,000.00) Dollars, or a total saving over the life of the bonds of about Eight Hundred Thousand (\$800,000.00) Dollars.

The respondents feel that as original financiers of the District they should not be summarily paid off at an inordinate discount, but should be permitted to accept the substantial discount as indicated above in the form of a reduction in interest over a period of time, rather than in cash.

Dated: this 10th day of December, 1938.

Respectfully submitted,

CHARLES L. CHILDERS

per LUCIUS F. CHASE

PETER TUM SUDEN

per LUCIUS F. CHASE

W. COBURN COOK

per LUCIUS F. CHASE

HUGH K. McKEVITT

per LUCIUS F. CHASE

HERMAN PHLEGER

per LUCIUS F. CHASE

DAVID FRIEDENRICH

per LUCIUS F. CHASE

LUCIUS F. CHASE

[Endorsed]: Filed Jan. 10, 1939. [144]

[Title of District Court and Cause.]

MINUTE ORDER

Honorable Paul J. McCormick, Judge.

All rulings made during the hearing of this matter are adhered to and confirmed. Exceptions allowed on all adverse rulings.

Findings of Fact, Conclusions of Law and Decree ordered for Merced Irrigation District confirming plan of composition of debts pursuant to

Chapter IX of Bankruptcy Act upon all issues of debtor's petition, filed June 17, 1938, and answers and objections of nonconsenting creditors. Exceptions allowed each answering and objecting creditor.

Attorneys for Merced Irrigation District will prepare and present under the rules Findings of Fact, Conclusions of Law and Decree in accordance with this order pursuant to directions contained in written "Conclusions of the Court" filed herein this day.

Dated January 10, 1939. [145]

[Title of District and Cause.]

CONCLUSIONS OF THE COURT

Merced Irrigation District, hereinafter called "the District," pursuant to Chapter IX of the Bankruptcy Act of 1938, has filed its petition for confirmation of a plan of composition of bond indebtedness. The constitutionality of the provisions of the Bankruptcy Act that are invoked by the District is unquestionable. *United States v. Bekins*, 304 U. S. 27.

The factual basis for the application to effect a composition of its bonded indebtedness of \$16,190,000 principal and about \$6,000,000 accrued and unpaid interest by scaling such debt structure to approximately \$8,338,000 with interest at 4 per cent.

from about October 1, 1935, is the utter inability of the District to service the outstanding bonds under applicable laws of the state of California, and it is clear from the record before us that if the debt structure of the District includes the original and uncanceled bonds, the District is hopelessly insolvent and the land owners within it will ultimately be in similar situations.

The primary question then to be determined is the status in this proceeding of the Reconstruction Finance Corporation, which for brevity will be designated as "R. F. C." This agency of the United States has acquired and now controls more than 90 per cent. of the bonds of the District, and its consent to the District's plan of debt reduction accompanies the petition. Is it a creditor of the District owning securities affected by the plan of debt composition? We think the question must be answered in the affirmative.

Section 82 of the Act under consideration (50 Stat. 653), defining [146] various entities that are involved in the debt composition proceedings of irrigation districts, states that

"The term 'creditor' means the holder of a security or securities.",

and that

"Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be

deemed a creditor in the amount of the full face value thereof.”,

and further that

“The term ‘security affected by the plan’ means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.”

The clear effect of the evidence justifies the conclusion that the R. F. C. is a creditor and bondholder to the principal amount of \$14,702,000 and accumulated interest on such outstanding bonds of the District as the R. F. C. now has under its control. The record shows that the R. F. C. has paid to the former owners of the bonds \$515.01 for each \$1.000 bond. Unconditional bills of sale have been regularly executed by the former owners or agents of former owners to the R. F. C. upon the acquisition of \$14,071,000 of the bonds, and of the remaining \$631,000 of the bonds bought by the R. F. C. a formal bill of sale was waived by it on delivery to it of the bonds upon payment by it to the former owners of the agreed price.

All of the bonds that have been so acquired have been, subsequent to delivery, duly registered in the name of the Reconstruction Finance Corporation as owner thereof, and all of such bonds at all times since their delivery to the agent and designated de-

pository of the purchaser have been subject to the sole control of the R. F. C.

It is true that concurrently with the transactions whereby the bonds were purchased, the R. F. C. agreed to loan and did conditionally loan for the benefit of the District approximately \$7,600,000. This money, however, was disbursed not to the District but to the former bond owners. [147] The financial arrangement was not merely a matter of the lender, upon the collateral security of outstanding bonds, advancing money to the borrower upon the promissory note of the borrower to repay with interest at the rate of 4 per cent. per annum, but the chief purpose and specific mutual intent of the agreement, as reflected in the writings, resolutions and transactions, was to effect a retirement of the outstanding bonds, and upon a situation being available whereby this could be done, to the satisfaction of the R. F. C., the District was to issue and deliver new refunding bonds to the R. F. C. for the amount of its cash outlay, with interest at 4 per cent. per annum, at which time the R. F. C. would surrender its presently possessed bonds for retirement, and the bond debt of the District would be reduced accordingly. No one can read the record of the negotiations between the governmental agency and the insolvent District and its security holders and fail to conclude that the paramount, imperative and essential feature of the contract was the ultimate and not the immediate retirement of the outstand-

ing bonds which the R. F. C. acquired. This was the objective of the deal, and the failure to attain it renders the whole refinancing project that was agreed to, insecure and dubious. To adopt a contrary interpretation of the agreement would defeat the purpose which the parties who made it sought to accomplish. This must be avoided. If such is the intention of the parties to the contract, it is obvious that the R. F. C. is a creditor whose security is affected by the plan under consideration.

In other words, we think that the clear intent of the parties to the transaction whereby the advancement of money sufficient to retire the outstanding bonds, none of which were owned by the District, was that such bonds as were relinquished and sold to the R. F. C. in the debt readjustment project were to be kept alive and available for further protection of the lender until such time as the R. F. C. concedes that the contractual scheme of refinancing the District pursuant to the agreement is complete. This scheme is definitely predicated upon the ultimate merger of all affected outstanding obligations into the later and new security insuring to [148] the R. F. C. under the various writings and documents that have been introduced into the evidence and which constitute the contract. See *In Re Drainage District No. 7* (D. C. Ark.) decided August 25, 1938; *Slupsky v. Westinghouse Electric & Mfg. Co.* (C.C.A. 8) 78 F. (2d) 13, and compare *Security-First National Bank v. Rindge Land & Navigation*

Co. (C.C.A. 9) 85 F. (2d) 557; *Mowry v. Farmers Loan & Trust Co.* (C.C.A. 7) 76 Fed. 38. The event, upon the happening of which the outstanding bonds would, under the contract, cease to be existing obligations of the district, has not yet occurred, and therefore all of such outstanding bonds constitute present obligations to the face value thereof and must be so regarded in evaluating the financial condition of the District in the plan of debt composition before this court.

And notwithstanding the time of acquisition of bonds by the R. F. C., the clear language of subparagraph (j) of Section 83 of the Bankruptcy Act of 1938 conclusively determines the proprietary status of the R. F. C. over the bonds surrendered by consenting bondholders and delivered to the R. F. C., as well as the right of the R. F. C. to have the bonds that were acquired by the disbursement of its money included in the counting of the consenting creditors in determining the percentage of the securities affected by the plan of composition submitted by the District. Sub-paragraph (j) of Section 83 reads:

“The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this Act by the exchange of new evidences of indebtedness under the plan for evidence of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred

before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this Act, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition."

Much of the argument advanced by the minority groups of objecting bondholders overlooks the chief governmental purpose of the Congress in enacting Chapter IX of the new Bankruptcy Act, beside leaving out of [149] consideration the manifest intent of the R. F. C. as shown by the documentary evidence in extending the loan with which it was made possible for the District to continue to function as an irrigation district under prevalent economic and agricultural conditions and the laws of the state of California. Both of these governmental agencies operated to forestall collapse of the District that was imminent under the record before this court. When the District went into default upon its bonds and before the R. F. C. approved the conditional loan to the District, its bonds were selling for eighteen cents on the dollar.

Under applicable statutes of the State of California, in the last analysis the bond owner in an irrigation district depends upon the earning or

producing power of the land within the district for any return upon his investment or payment of his bond. The evidence before us shows that at the time default occurred in the bonds in 1933 the land of the District as a whole did not and could not be made to pay its cost of operation and consequently the land owners were unable to pay the assessments to service the bonds. This condition of delinquency continued and even became more aggravated by pyramiding unpaid assessments under applicable state laws year after year, until shortly prior to the availability of the plan embodied in the petition now before this court it had reached an aggregate delinquency of 62 per cent. It was undoubtedly this impoverished condition of the District that kept depreciating the bonds. And according to credible testimony at the hearing, the productivity of the land within the District, and its revenue, is little, if any, better than it was in 1933 when the defaults in the bond indebtedness commenced.

But it is argued, assuming that the R. F. C. is the owner and holder of about \$14,702,000 of existing and outstanding bonds which have been relinquished and voluntarily transferred by their former owners, the plan should be held to be unfair and inequitable to the bondholders who held out and are now before the court opposing the plan of settlement, because, they assert, the present financial condition of the District does not justify such

an extreme paring of the debt structure as the plan accomplishes. [150] We think this contention loses its force when consideration is given to the fact that it was the more than 90 per cent. of the bondholders who took advantage of the R. F. C. composition agreement and transaction which made it possible for the District to save itself from financial ruin and thereby to a major degree brought about the present fiscal situation which the records in evidence show exists in the District. These conclusions are more than justified by the Benedict testimony and report and by the evidence of the witness Momberg. In our opinion there can be little doubt that under the record, if the loan from the Reconstruction Finance Corporation had not been negotiated, the outstanding bonds of the dissenting bondholders would be worth much less than the price that can now be received by them under the plan that is before us for consideration. We consider as most forceful, irrefutable evidence of the fairness of the plan the indisputable fact that more than 90 per cent. of the invested capital in the bonds of the District has taken advantage of it. The legal requirement of debt composition under Chapter IX of the Bankruptcy Act has been exceeded by nearly 25 per cent. of the affected invested capital.

A proposal of dissenting bondholders asks this court to modify the plan under consideration by giving them 100 per cent. of the principal of their

bonds respectively and in addition approximately one-half of the interest that has accrued under their bonds according to the terms thereof since July 1, 1933. This, if adopted by the court, would enable less than 10 per cent. of the bondholders of the District to reap an unjust enrichment at the expense of more than 90 per cent. of the same class of bondholders who have accepted the plan and who have voluntarily ended any control over their bonds for approximately fifty cents on the dollar. Such is undoubtedly the effect of the proposal of the nonconsenting bondholders, because under it they are permitted to retain the outstanding bonds which they now own or control and merely conditionally agree to accept a reduction of interest on all coupons, matured and unmatured, to 3 per cent. per annum in lieu of $5\frac{1}{2}$ or 6 per cent. stipulated in the bonds. We believe the suggested modification to be inequitable, discriminatory, illegally [151] preferential and unjust. It not only financially penalizes approximately 91 per cent. of the bondholders who consented to the plan before the court, and for no reason except that such bondholders did consent, and thereby contributed to bring about the present improved outlook for the District, but it also classifies the bondholders of the Merced Irrigation District into two groups or classes, when in equity and fair treatment in a composition under the Bankruptcy Act of 1938 all of such bondholders

should be considered on an equality and dealt with on parity. We also believe that the court by approving the suggested change would jeopardize if not injuriously upset present and prospective necessary improvements in the District, throw its entire contractual arrangement with the Reconstruction Finance Corporation into uncertainty, and encourage unjustifiable delay in the adjustment and settlement of the financial status of the District. The R. F. C. has signified no willingness to advance more money to the retirement of the bonds than it has under the contract already made, and it cannot be required to do so by this court. We cannot alter the agreement under which the District and all financially interested in it were saved from forced liquidation which would have caused greater loss than the bond investors are to take under the plan.

We think it a fair deduction from the evidence to state that the current hopeful fiscal condition of the District is attributable, as already stated, primarily to the money advanced by the R. F. C. which was conditionally paid for the purpose of preventing the collapse of the District by supplying money for the retirement of the outstanding bonds, so as to substantially reduce the bonded indebtedness, and secondarily to a providential water supply during the last two or three years which has enabled the District to earn unprecedented revenue from its power facilities. But the experiences of the past,

as shown by the record before us, do not warrant a finding that power revenue conditions similar to those existing will continue in the future, and it would be injudicious to venture the further financial ability of the District to meet its obligations upon problematical water sources or conditions. This would be too dubious a [152] situation to warrant adoption by the court.

There are, we think, but two further contentions of the dissenting bondholders which require discussion. These may be disposed of briefly.

Prior to the institution of this proceeding the District, in line with recurring attempts to extricate itself from impending financial destruction occasioned by uncollectible tax requirements to service its bond obligations, sought to avail itself of an Act of Congress (30 Stat. 544), providing for the readjustment of the debt of political subdivisions of the state. The purpose of such action was effectively the same as the proceeding now before the court. After hearing and consideration, this court on March 6, 1936, held that the plan which is again submitted was fair, equitable and non-discriminatory to all bondholders and creditors affected thereby, and the court at that time entered a decree so adjudging and directing confirmation of the plan, which required the minority dissenting bondholders, who are again opposing the plan set forth in the present petition, to partici-

pate and accept \$515.01 for each \$1,000 bond and coupons.

From such decree, the dissatisfied group of investors took an appeal to the Ninth Circuit Court of Appeals, and before the same could be heard therein, the United States Supreme Court in *Ash-ton vs. Cameron County Water Improvement Dis-trict*, 298 U. S. 513, declared the Congressional leg-islation, under which the proceeding was com-menced and decided, to be unconstitutional.

Thereafter, upon motion of appellants for re-versal of the decree of this court, based and stated to be solely and entirely upon the Supreme Court decision of unconstitutionality of the statute au-thorizing the proceeding, the appellate court grant-ed the motion and pursuant thereto reversed the decree of the District Court and by mandate di-rected this court to dismiss the entire cause. 89 F. (2d) 1002. A petition for the writ of certiorari was denied by the Supreme Court. 302 U. S. 709.

The nonconsenting bondholders contend that the judgment of dismissal in the earlier proceeding is a conclusive determination that adjustment of [153] debtor-creditor relations represented by the dissenters' bonds is beyond the bankruptcy power of Congress, and that this court cannot be given jurisdiction to make such readjustment. The argu-ment stated in other terms is that the doctrine of *res judicata* is applicable to this proceeding be-

cause the parties are the same as well as the subject matter and the relief sought, as was the case in the former void action.

We think the plea of former adjudication is not available. The court in the proceeding under the unconstitutional law functioned in an utterly powerless environment. Its processes *ab initio* were *coram non judice*, and had no force or authority. The sole basis for judicial action is law, and if there be none, as was the case in procedure under the ineffectual and void Section 80 of the Bankruptcy Act, the assumed court action is a nullity and neither confers nor withdraws rights.

The impotency of the court under the old Act of Congress to affect in any way the status of debt structure of the District necessarily leaves the subject matter of debt composition open and undecided. It is still within the legislative field of Congress under the bankruptcy clause of the Constitution. *United States v. Bekins*, 304 U. S. 27; *Adair v. Bank of America*, 303 U. S. 350. In other words, as has been so aptly expressed by the Supreme Court in *Manhattan Life Ins. Co. v. Broughton*, 109 U. S. 121,

“A trial upon which nothing was determined cannot support a plea of *res judicata*, or have any weight as evidence at another trial.”

We think that not only was the judgment in the former proceeding wholly void because not based

upon law, but by the same token we are confident that the court had no jurisdiction whatever in the matter. Under such circumstances *res judicata* cannot be invoked in the later action, for as the Supreme Court, speaking through Justice Holmes in *Murray v. Pocatello*, 226 U. S. 318, said,

“Of course, if the court was not empowered to grant the relief whatever the merits might be, it could not decide what the merits were.”

The final plea of the objecting bondholders is that because of the filing and prosecution by the District of a proceeding in the Superior [154] Court of Merced County, State of California, under an Act of the Legislature of California, passed in 1937 and officially known in short title as “Irrigation District Refinancing Act” (Stat. Cal. 1937, Ch. IV), this court has no jurisdiction to proceed with the hearing and determination of this matter.

The action was filed on or about July 27, 1937, and prior to the enactment of the Congressional legislation upon which this federal court proceeding is based. Its object was to effectuate under the aforesaid state law the same plan that is the basis of this proceeding pursuant to Chapter IX of the Bankruptcy Act, and the identical parties appear in the two forums.

The matter proceeded to hearing in the state court and over objections of dissenting bondholders, who now oppose this proceeding, the Superior

Court on March 10, 1938, held the state law to be valid and constitutional and directed that findings and an interlocutory judgment confirming the plan be entered pursuant to Section 8 of the state act. No findings or judgment have been entered, and nothing further has been done in the state proceedings. The matter is still pending therein.

This bankruptcy proceeding was filed in this court June 17, 1938.

We believe there is a serious question as to the constitutionality of the California "Irrigation District Refinancing Act." It comes very close to impairing, if it does not actually impair, the obligations of contracts, and thereby transcends state legislative power; United States Constitution, Art. I, Sec. 10 a 1; *In Re Imperial Irrigation District*, 10 F. Supp. 832; but we are not disposed to consider the constitutionality of the state law until the California courts of appeal have considered and passed upon it. *In Re Boswell*, 20 F. Supp. 748. Moreover, we think it unnecessary to pass upon the validity of the state law, as we think there can be no merit in the objections to this court's jurisdiction under the broad grant of national power in debt composition matters.

The constitutional power of Congress to establish "uniform laws on the subject of bankruptcies throughout the United States" is paramount to [155] powers of the states and it is firmly established in the United States that the "subject of

bankruptcies'' is nothing less than the subject of the relations between an insolvent or nonpaying debtor and his creditors, extending to its or their relief. *Continental Bank v. Rock Island Railway* 294 U. S. 648.

And when the jurisdiction of the federal court is constitutionally invoked under an existing Act of Congress relating to the subject of bankruptcy, as it has been in this proceeding, it is exclusive of all other courts; *U. S. Fidelity, etc., Co. v. Bray*, 225 U. S. 205; and particularly is this the case when, as here, the state court has not proceeded to the making of any findings of fact or to the entry of any decree adjudging or purporting to adjudge rights.

A court of bankruptcy itself is powerless to surrender its control of the administration of the estate. *Isaacs v. Hobbs Tie & T. Co.*, 282 U. S. 734; *Moore v. Scott* (C.C.A. 9) 55 F. (2d) 863; *In Re A. C. Wagy & Co.* (C.C.A. 9) 20 F. (2d) 638.

We think that the state court proceeding from any point of view is wholly immaterial to this bankruptcy matter.

Certain of the objecting bondholders argue that the plan under consideration is unfair and not for the best interest of the creditors of the District because it discriminates in favor of owners of other bonds issued by cities, drainage districts and school districts which lie within the area of the Merced

Irrigation District and whose obligations are unimpaired by this proceeding. It is similarly argued that the same situation exists as to the obligations incurred by mortgages and deeds of trust upon lands within the District, none of these securities being included in the plan.

The aggregate amount of other outstanding bonds, as far as it is ascertainable from the exhibits in evidence, is relatively so small as compared with the outstanding bonds of the District, and the land within the District affected by such other outstanding bonds is so ununiform in relation to the area covered by the outstanding bonds of the District, as to make it impracticable and inadvisable to require that such other obligations [156] be taken into account in this proceeding before the plan under consideration is approved. And as far as the obligations of mortgages and trust deeds are concerned, we think that claims based upon them are clearly not to be classified the same as obligations evidenced by bonds which are serviced by assessments levied under taxing processes. The lien claims and rights of such securities are entirely dissimilar to bond obligations, under applicable laws of the State of California. If these collateral debts in the District must be considered and readjusted before a composition of the bond indebtedness of the District itself can be accomplished, the delay and difficulties attendant on such matters will destroy the efficacy

of Chapter IX of the Bankruptcy Act as far as the Merced Irrigation District is concerned.

In conclusion, after deliberate consideration of the entire record in this proceeding, we find that the plan of Merced Irrigation District for the composition of its debts under Chapter IX of the Bankruptcy Act of 1938, as alleged in the petition filed June 17, 1938, and as disclosed at the hearings in this court, is lawful in every respect, fair, equitable, and for the best interest of all creditors, and does not discriminate unfairly in favor of any creditor or class of creditors. The plan is accordingly confirmed.

Attorneys for the petitioner will prepare and present appropriate Findings of Fact, Conclusions of Law, and interlocutory Decree confirmatory of the plan embodied in the petition.

Dated January 10th, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Conclusions of the Court. Filed Jan. 10, 1939. [157]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE OBJECTIONS AND EXCEPTIONS.

It is hereby ordered that petitioners may have to and including Monday, the 13th day of Febru-

ary, 1939, within which to file objections and exceptions to proposed findings and decree of petitioner, and in which to submit proposed findings of defendants, in the above entitled cause.

Dated: February 6, 1939.

PAUL J. McCORMICK,

District Judge.

[Endorsed]: Filed Feb. 7, 1939. [158]

[Title of District Court and Cause.]

CERTIFIED COPY OF RESOLUTION OF
BOARD OF DIRECTORS OF MERCED IR-
RIGATION DISTRICT CONSENTING TO
THE PLAN OF COMPOSITION OF BOND
INDEBTEDNESS.

CERTIFIED COPY OF RESOLUTION OF IN-
TENTION TO ADOPT RESOLUTION.

AFFIDAVIT OF PUBLICATION OF NOTICE
OF INTENTION OF BOARD OF DIREC-
TORS OF MERCED IRRIGATION DIS-
TRICT TO ADOPT RESOLUTION.

AFFIDAVIT OF POSTING NOTICE OF IN-
TENTION OF BOARD OF DIRECTORS
OF MERCED IRRIGATION DISTRICT TO
ADOPT RESOLUTION. [159]

RESOLUTION

Whereas the Merced Irrigation District did here-
tofore on the 17th day of January, 1939, by reso-

lution give notice of its intention to adopt a resolution consenting to and confirming and approving the plan of composition of bond indebtedness as set forth in the petition of the Merced Irrigation District filed in the District Court of the United States in and for the Southern District of California, Northern Division, in proceeding Number 4818 in Bankruptcy, entitled "In the Matter of the Merced Irrigation District, Debtor, Petition for Confirmation of a Plan of Composition of Bond Indebtedness," and

Whereas the time and place set for hearing upon said matter was and is Tuesday, the 24th day of January, 1939, at the hour of ten o'clock A. M., of said day, at the office of the Board of Directors of the Merced Irrigation District at 1423 "L" Street, in the City of Merced, County of Merced, State of California; and

Whereas due notice as provided in said resolution of January 17, 1939, was duly given; and

Whereas the said matter was duly considered and a hearing held at said time and place pursuant to said resolution of January 17, 1939.

Now, therefore, be it resolved that the Merced Irrigation District does hereby consent to and approve and adopt the plan of composition of bond indebtedness as set forth and outlined in the plan and petition of the Merced Irrigation District in said cause Number 4818, pending in the District

Court of the United States, in and for the Southern District of California, Northern Division.

[160]

I, H. P. Sargent, Secretary of the Merced Irrigation District, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of said District at a regular adjourned meeting held on the 24th day of January, 1939, by unanimous vote.

In witness whereof, I have hereunto affixed my hand and the seal of the said District, this 24th day of January, 1939.

[Seal]

H. P. SARGENT,

Secretary Merced

Irrigation District. [161]

NOTICE OF INTENTION OF BOARD OF DIRECTORS OF MERCED IRRIGATION DISTRICT TO ADOPT RESOLUTION ON JANUARY 24, 1939.

RESOLUTION

Whereas the Merced Irrigation District heretofore adopted a plan of composition of bond indebtedness relative to its outstanding bonds, which plan contemplates the issuance of refunding bonds, and said District heretofore presented its petition to District Court of the United States, in and for the Southern District of California, Northern Di-

vision, in proceedings Number 4818, in Bankruptcy, for the approval of said plan. Said proceeding is entitled "In the Matter of the Merced Irrigation District, Debtor, Petition for confirmation of a Plan of Composition of Bond Indebtedness." Hearings thereon have heretofore been had before Honorable Paul J. McCormick, United States District Judge, who on January 10, 1939, filed in said court and proceeding written "Conclusions of the Court" and his order for preparation of a decree confirming and approving said plan of composition, and the Merced Irrigation District intends to adopt a resolution consenting to and confirming and approving said plan of composition of bond indebtedness as set forth in said petition.

Now, therefore, be it resolved that the Merced Irrigation District hereby gives notice of its intention to adopt a resolution consenting to and confirming and approving said plan of composition of bond indebtedness, and of the fact that by said plan of composition of bond indebtedness it is proposed to levy special assessments or reassessments or special assessment taxes upon real property in the amounts and in the manner required by said plan of composition of bond indebtedness set forth in said petition to said United States District Court.

[162]

Notice is hereby given that Tuesday, the 24th day of January, 1939, at the hour of ten o'clock in the forenoon of said day, is hereby fixed as the

time, and the office of the Board of Directors of the Merced Irrigation District, at 1423 "L" Street, in the City of Merced, State of California, is hereby fixed as the place, when and where all persons interested in any such assessments or reassessments or special assessment taxes will be heard by the Merced Irrigation District. Said time is hereby declared to be a reasonable time for such hearing, and notice thereof shall be given in the following manner which is hereby declared to be a reasonable manner for the giving of said notice as follows to-wit: By the publication of a copy of this resolution in the Merced Sun Star, a newspaper of general circulation, printed and published in the City of Merced, County of Merced, State of California, for a period of five (5) days prior to said hearing, and by the posting of a copy of this resolution in three (3) public places in the County of Merced, State of California, which said notices shall be posted five (5) days prior to the date and time of said hearing. Copy of this resolution shall be, and same is hereby declared to be, and shall constitute notice of said hearing. Said hearing will be held before the Board of Directors at said time and place, and all persons interested will be heard in reference to any assessments or reassessments or special assessment taxes called for under said plan of composition of bond indebtedness of said refunding bonds. The determination of the Merced Irrigation District and its Board of Directors at such hearing shall be and constitute its

final determination approving and consenting to said plan of composition of bond indebtedness for the purpose of obtaining the final decree and order of the District Court of the United States confirming said plan of composition of bond indebtedness. [163]

This is to certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of said District at a regular adjourned meeting held on the 17th day of January, 1939, by unanimous vote.

In witness whereof, I have hereunto affixed my hand and the seal of the said District, this 17th day of January, 1939.

[Seal]

H. P. SARGENT,

Secretary Merced

Irrigation District. [164]

AFFIDAVIT OF PUBLICATION

State of California,
County of Merced—ss.

Dorothy L. Solis being duly sworn, deposes and says: I am now, and at all times herein mentioned have been a resident of the City of Merced, Merced County, State of California, a citizen of the United States and State of California, and over the age of 21 years, and in no way or manner interested in the matter the subject of the annexed

notice. I am now and during all times herein mentioned Secretary of the Merced Sun-Star. That said Merced Sun-Star is and at all times herein mentioned was a daily newspaper of general circulation, printed and published at the City of Merced, Merced County, State of California. That the said newspaper is now and at all times herein mentioned has been printed and published upon each and every afternoon, except Sundays and certain legal holidays.

That the Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution on January 24, 1939, a copy of which is attached upon the left hand side of this page opposite to this affidavit, was printed and published in said newspaper and in every issue thereof from and including the 17th day of January, 1939, to and including the 23rd day of January, 1939. That is to say said notice was published in the issues of said newspaper on the following dates:

[165]

In the issue of January 17, 1939,	
In the issue of January 18, 1939,	
In the issue of January 19, 1939,	
In the issue of January 20, 1939,	
In the issue of January 21, 1939,	
In the issue of January 23, 1939,	
In the issue of	19
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DOROTHY L. SOLIS.

Subscribed and sworn to before me, this 24th day of January, 1939.

[Seal] LAURA MURPHY,
Notary Public in and for Merced County, State of
California. [166]

H. P. Sargent, being first duly sworn, deposes and says:

That he is the duly appointed and acting Secretary of the Board of Directors of Merced Irrigation District.

That pursuant to the provisions of the statute, he did on Tuesday, January 17, 1939, post in three (3) public places a certified copy of a resolution adopted by the Board of Directors of Merced Irrigation District on January 17, 1939, giving notice that on Tuesday, January 24, 1939, said Board intended to adopt a resolution consenting to and confirming and approving a plan of composition of bond indebtedness, and of the fact that by the plan

of composition of bond indebtedness it is required to levy special assessments or reassessments and special assessment taxes on real property in the amounts and in the manner required by said plan of composition of bond indebtedness, set forth in said petition in Bankruptcy in the United States District Court, said notice being posted in the following places, to-wit:

1. On Bulletin Board at Merced County Courthouse, City of Merced.
2. On Bulletin Board at Merced County Jail, City of Merced.
3. On Bulletin Board on the East side of "M" Street between 16th and 17th Streets, City of Merced.

Copy of said resolution so posted is hereto attached.

H. P. SARGENT,
Secretary Merced
Irrigation District.

Subscribed and sworn to before me this 18th day of January, 1939.

[Seal] P. BERTAINA,
Notary Public in and for the County of Merced,
State of California. [167]

[Endorsed]: Filed Feb. 13, 1939. [170]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW AND
DECREE

Come now respondents in the above entitled proceeding, and object to the proposed Findings of Fact and Conclusions of Law in the following particulars and upon the following grounds, to-wit:

I

Object to finding in Paragraph I that Merced Irrigation District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937, now designated as Chapter IX of the Bankruptcy Act of the United States.

II

Object to the finding in Paragraph I that the petition herein was filed pursuant to the provisions of said Act of August 16, 1937.

III

Object to the findings in Paragraph IV that the petitioner, Merced Irrigation District, is (1) insolvent, and (2) unable to meet its debts as they mature.

IV

Object to the findings that the plan of composition is (1) fair, (2) that it is equitable, (3) that it is for the best interests of the District's cred-

itors, and (4) that it does not discriminate unfairly against any creditor or creditors or class of creditors. [171]

V

Object to the finding that the plan of composition complies with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937.

VI

Object to the finding in Paragraph IV that before the filing of the petition herein, said plan of composition was accepted and approved in writing by and on behalf of creditors of petitioner owning and holding more than 75% of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims held, owned or controlled by petitioner.

VII

Object to each and all of the findings in Paragraph V, except the finding that before the filing of the petition herein, the Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

VIII

Object to all the findings in Paragraph VI.

IX

Object to all the findings in Paragraph VII, unless amended (1) by adding after the word "unconstitutional" in line 7, the words, "as applied to the facts before the court at said time", and (2) by eliminating therefrom the finding, "The court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court and that there was no judgment on the merits in said proceeding". Also object to the finding that the court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that the petitioner herein is not barred in this proceeding by res adjudicata or otherwise. [172]

X.

Object to the finding in Paragraph VII, line 4, page 8, commencing with the words, "The Court finds that said proceeding so dismissed," and ending with the words in line 5, page 8, "not barred in this proceeding by res adjudicata or otherwise."

XI.

Object to the finding in Paragraph VIII, line 3, page 9, reading as follows: "That said action pending in State Court does not prejudice or bar the commencement, maintenance, or prosecution of this proceeding."

Said objections are made upon the grounds (1) that the evidence in the case wholly fails to sustain

each and every of the findings objected to, and (2) upon the further ground that the evidence is insufficient to sustain each and every of the said findings objected to.

Respondents further object to the failure to find upon each and all of the several defenses raised in the several answers of the respondents hereto, and particularly upon the issues referred to in proposed findings submitted herewith.

Said objection is based upon the ground that the said matters hereinabove referred to are material to the determination of the cause herein, or properly at issue herein, and evidence thereon was duly introduced at the trial of the said cause and that said findings are necessary to the proper disposition thereof.

Respondents further object to the Conclusions of Law, particularly the conclusion that Merced Irrigation District is entitled to an interlocutory decree and judgment approving and confirming the plan of composition as proposed and presented, and the conclusion that said decree of confirmation shall become and be binding upon all creditors affected by the plan upon the terms set forth in the [173] Conclusions of Law.

Said objection to the Conclusions of Law is made upon the grounds (1) that said petitioner is not entitled as a matter of law to the relief described in said Conclusions of Law, and (2) that the facts are insufficient upon which to base such a conclusion, and (3) that the evidence is insufficient to

sustain the said Conclusions of Law, and (4) that the findings do not support the said Conclusions of Law.

XII.

Objection to Proposed Interlocutory Decree

Respondents further object to the proposed interlocutory decree submitted by petitioner herein in each and every respect in which respondents have objected to the proposed Findings of Fact and Conclusions of Law, and upon the same grounds and for the same reasons.

Request for Findings

Respondents further request Findings of Fact and Conclusions of Law and Decree to be entered herein, finding:

I

That the said Merced Irrigation District is not an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937, now designated as Chapter IX of the Bankruptcy Act of the United States.

II

That the petition herein was not filed pursuant to the provisions of said Act.

III

That the Merced Irrigation District is not insolvent, and that it is able to meet its debts as they mature.

IV.

That the plan of composition submitted by the petitioner is [174] (1) unfair, (2) inequitable, (3) not for the best interests of the District's creditors, (4) that it does unfairly discriminate against respondents and all others similarly situated.

V

That the plan of composition does not comply with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States.

VI

That the purported plan of composition was not accepted or approved in writing by and on behalf of creditors of petitioner owning and holding more than 75% of the aggregate amount of claims of all classes affected by such plan, excluding claims held, owned or controlled by petitioner, either before or after the filing of petition herein, and that such plan has not been accepted by any of the creditors affected by the plan.

VII

That the Reconstruction Finance Corporation does not own, hold or control approximately \$14,-702,000.00 principal of the outstanding \$16,190,-000.00 principal bond indebtedness of said District, but that the said bonds, in the amount of \$14,-702,000.00 are held by the Reconstruction Finance Corporation as collateral to a loan by the Merced Irrigation District, and said bonds are owned by

said District and in legal contemplation are cancelled.

VIII

That the allegations and averments set forth in the petition for the confirmation of the plan of composition of bond indebtedness are not true, and that the denials of said petition set forth in the answers of respondents are true.

IX

That the proposed findings in Paragraph VII be amended by adding after the word "unconstitutional" in line 7, the words, "as applied to the facts before the court at said time", and by eliminating therefrom the finding, "The court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court and that there was no judgment on the merits in said proceeding", and also by eliminating therefrom the finding that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that the petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise.

Petitioner further requests findings upon each and all of the several issues tendered by the several special defenses set forth in the several answers and/or objections of respondents and/or objectors herein, finding as alleged in each of the said several defenses in favor of respondents and objectors.

Petitioner further requests findings upon the motion to determine whether or not the Reconstruction Finance Corporation is a party materially affected by the plan proposed in these proceedings, finding that the said Reconstruction Finance Corporation is not a party materially affected by said plan.

Petitioner further requests that the court find and conclude as its Conclusions of Law that the Petition of the Merced Irrigation District herein be dismissed and judgment and decree be entered for respondents accordingly.

W. COBURN COOK, per L. F. C.

CHARLES CHILDERS, per L. F. C.

PETER TUM SUDEN, per L. F. C.

DAVID FREIDENRICH.

BROBECK, PHLEGER & HARRISON,

By.....

CLARK, NICHOLS & ELTSE,

By.....

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE.

[Endorsed]: Objections to Proposed Findings of Fact and Conclusions of Law. Filed Feb. 21, 1939. [177]

The foregoing six pages of typewritten matter was presented by Lucius P. Chase, Esq., on February 20, 1939, duly considered, and thereafter the

judge on this Feb. 21, 1939, made and filed Findings of Fact, Conclusions of Law, and Interlocutory Decree herein.

PAUL J. McCORMICK,

Judge. [176]

[Title of District Court and Cause.]

RESPONDENTS' PROPOSED ADDITIONAL
FINDINGS TO PETITIONER'S PRO-
POSED FINDINGS OF FACT AND CON-
CLUSIONS OF LAW.

IX

The Court further finds that the Reconstruction Finance Corporation, pursuant to a contract with the Merced Irrigation District, acquired and now has physical possession of bonds of the Merced Irrigation District in the principal face amount of \$14,702,000.00, by the terms of which contract the said Reconstruction Finance Corporation receives from the said Merced Irrigation District an assignment of certain of the power revenues of the Merced Irrigation District to be held in a separate fund for the purpose of repaying to the Reconstruction Finance Corporation the total of sums paid by the Reconstruction Finance Corporation for the acquisition of the said bonds of the Merced Irrigation District held by it, and interest thereon at 4% per annum, and that said sums so assigned to the said Reconstruction Finance Corporation

constitute a special fund not available to respondents herein or any other creditors owning bonds of the said Merced Irrigation District, and that said sums so set aside in the hands of the Merced Irrigation District payable to said Reconstruction Finance Corporation as of November 1, 1938, totaled \$1,049,992.98. That the said Reconstruction Finance Corporation has obligated itself to deliver the bonds held by it to the Merced Irrigation District upon the repayment to the said Reconstruction Finance Corporation by the Merced Irrigation District of the sums advanced by it to purchase the bonds held by it. That the said Reconstruction [178] Finance Corporation has received interest from the Merced Irrigation District on the amounts advanced to purchase the bonds held by the Reconstruction Finance Corporation at the rate of 4% per annum from the several dates of the advancements for the purchase of such bonds, and that the aggregate amount of interest so received by the said Reconstruction Finance Corporation as of November 1, 1938, was the sum of \$824,684.00 and that additional interest at the same rate is payable to the Reconstruction Finance Corporation by the said Merced Irrigation District semi-annually. That under the plan proposed herein the respondents shall receive interest at the rate of 4% per annum on the sum of \$515.01 for each bond deposited at the rate of 4% per annum only from the date such bonds are hereafter tendered by respondents for

sale until they respectively receive payment, and they shall receive no interest on such sum or any other sum prior thereto.

That the Reconstruction Finance Corporation, under the plan herein proposed and hereinafter made effective, will receive a return of all sums heretofore advanced by it with interest at the rate of 4% per annum; that the respondents herein and the bondholders of the said Merced Irrigation District, other than Reconstruction Finance Corporation, will receive a material reduction in the principal amount of their bonds, and in most cases will receive less than an amount paid therefor, and will receive no interest whatsoever excepting from a date subsequent hereto when they shall have tendered their bonds in accordance with the said plan.

X

That the said Reconstruction Finance Corporation constitutes a class separate and apart from respondents herein and all other bondholders.

XI

That the said Reconstruction Finance Corporation is a creditor of Merced Irrigation District but not materially affected by the plan of composition proposed. [179]

XII.

That the petitioner herein is an agency of the State of California. That the functions of the pe-

petitioner are exclusively governmental. That the petitioner holds no property and exercises no functions that are not governmental. That the issuance of the bonds sought to be refunded in this proceeding and the provisions for the payment thereof, and all procedure in connection with obtaining the funds therefore and the payment thereof, and the levying and collection of taxes for the payment thereof are all governmental functions of the petitioner. That the relief sought in these proceedings will affect and alter such functions and procedure.

XIII.

That the purported consent of the State of California granted by the Act of 1934 purporting to permit and authorize irrigation districts to institute bankruptcy proceedings related to proceedings under Section 80 of the Bankruptcy Act and not to proceedings under the Act of 1937 under which the proceedings herein are sought to be brought.

XIV.

That the petitioner herein is directly obligated for the payment of drainage district bonds which as of 1936 aggregated the amount of \$29,000.00, no reduction of which has been made or is contemplated. That said bonds are raised by a tax levy in the same manner as are the bonds herein sought to be refunded.

That in addition thereto said petitioner has obligated itself for the payment of several hundred

thousand dollars to the holders of Crocker Huffman contracts, being landowners within said Merced Irrigation District, the balance owing on said contracts at the present time amounting to approximately \$200,000.00. That no reduction has been made or is contemplated in amounts payable under said contracts.

That in addition thereto outstanding bond indebtedness of Merced County, the cities within the district and taxing districts [180] partly or wholly within Merced Irrigation District aggregates approximately \$1,500,000.00. That all of the bonds issued by said districts are in good standing and are currently being paid, and that no reduction has been made or is contemplated in any of such bonds. That all of said bonds are payable from taxes levied upon the same lands as are the taxes levied for the purpose of paying the bonds of the Merced Irrigation District. That said bonds have a market value generally in excess of par.

[Endorsed]: Respondents' Proposed Additional Findings to Petitioner's Proposed Findings of Fact and Conclusions of Law. Filed Feb. 21, 1939.

The foregoing was presented Feb. 20, 1939, by Lucius P. Chase, Esq., considered and thereafter the Judge on this Feb. 21, 1939 made and filed Findings of Fact, Conclusions of Law and Interlocutory Decree herein pursuant to Chap. IX of Bankruptcy Act 1938.

PAUL J. McCORMICK,

Judge. [181]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The petition of Merced Irrigation District for confirmation of a plan of composition of its bond indebtedness heretofore came on duly and regularly for hearing before this Court, said Irrigation District appearing by its counsel, C. Ray Robinson, Hugh K. Landram and Stephen W. Downey, and objectors appearing by counsel as follows: Messrs. Freidenrich & Selig and Kirkbride & Wilson, appearing for Claire S. Strauss; Messrs. Brobeck, Phleger & Harrison, appearing for Florence Moore, et al; Messrs. tum Suden and tum Suden appearing for Minnie Rigby and Richard tum Suden as executors, etc., of the estate of Wm. A. Lieber; Hugh K. McKevitt, Esq., appearing for Pacific National Bank of San Francisco; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; Clark, Nichols & Eltse appearing for Mary E. Morris; Chase, Barnes & Chase, Esqs., appearing for R. D. Crowell and Belle Crowell and Coburn Cook, Esq., appearing for Milo W. Bekins, et al. Thereupon the Court proceeded to hear the allegations and proofs in support of said petition and plan of composition and all matters and things pleaded and offered to controvert [182] the facts in said petition and in opposition to said plan of composition. The said petition and said matters and objections having been duly and fully heard

and argued and the hearing as to all parties having been concluded and the matter submitted to the Court by and on behalf of all parties, and the Court having considered all objections to said petition and said plan of composition and having filed herein a memorandum setting forth its conclusions with respect to the law and the facts, now makes and files its Findings of Fact and Conclusions of Law, in addition to those set forth in said Memorandum, as follows, to-wit:

FINDINGS OF FACT

I.

That petitioner, Merced Irrigation District, is an irrigation district duly formed, organized and existing under and by virtue of the provisions of the California Irrigation District Act of the State of California and said District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress and Approved August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States) and that the petition herein was filed pursuant to the provisions of said Act approved August 16, 1937.

II.

That petitioner is located wholly in the County of Merced, in the Southern Judicial District of California, Northern Division, and within the territorial jurisdiction of this court; that proof of due

publication and mailing of the notice to creditors heretofore [183] ordered by this Court has been duly filed; that such notice was first duly published as required by law and the order of this court, and that copies thereof were duly mailed to each of the creditors at their last known post office addresses at least sixty (60) days before the date fixed for hearing and as required by law and this court. That notice has been duly and regularly given in the time, form and manner as required by law and this court and that said petition was duly and regularly continued from time to time until Monday, the 21st day of November, 1938, at 10 o'clock A. M. of said day when said petition and all objections thereto came duly and regularly on for hearing and were heard.

III.

That the filing of the petition herein was authorized by proper resolution duly passed and adopted by the Board of Directors of petitioner prior to the filing thereof and that the fees required by the act hereinbefore mentioned were duly paid.

IV.

That petitioner, Merced Irrigation District, is insolvent and unable to meet its debts as they mature and desires to effect a plan of composition of its outstanding bond indebtedness. That petitioner did heretofore duly adopt such plan of composition

and that said plan of composition is set forth in the petition herein and is as follows, to-wit:

“That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or [184] before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three

Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation an agency of the United States of America, to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal [185] sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum.

“The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurte-

nant thereto which matured or became due July 1, 1933, and subsequently thereto."

That the plan of composition as offered by the petitioner herein is fair, equitable and for the best interests of its creditors and does not discriminate unfairly in favor of or against any creditor or creditors or class of creditors; that the plan of composition complies with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted and approved in writing by or on behalf of creditors of petitioner owning and holding more than ninety per cent (90%) of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims owned, held or controlled by petitioner; that all amounts to be paid by petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable and that the offer of the plan and its acceptance are in good faith and petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the terms thereof. [186]

V.

That prior to the filing of the petition herein the Reconstruction Finance Corporation, an agency of the United States, pursuant to contract with petitioner, purchased at the composition rate afore-

said, and ever since has owned, held and controlled and now owns, holds and controls, over 90% of the outstanding bond indebtedness of said District, to-wit, the Reconstruction Finance Corporation now owns, holds and controls approximately Fourteen Million Seven Hundred Two Thousand Dollars (\$14,702,000.00) principal of the outstanding Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) principal bond indebtedness of said District. That said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned, held and controlled by it. That there are no bonds owned, held or controlled by said petitioner district. That before the filing of the petition herein, said Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

VI.

That all of the allegations and averments set forth in said petition for confirmation of the plan of composition of bond indebtedness are true; and that all the denials of said petition set forth in the answers of objectors are untrue.

VII.

Respecting the plea of *res adjudicata* filed by objectors herein, the Court finds as follows:

That heretofore on the 18th day of April, 1935 petitioner herein filed in this Court a petition for

debt readjustment under [187] and pursuant to an Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States. That by said proceeding petitioner sought to confirm a plan of readjustment of its bond indebtedness under which the holders thereof would receive \$515.01 for each \$1000.00 bond and interest coupons due July 1, 1933 and subsequently thereto. That thereafter on the 4th day of March, 1936, judgment was entered by the above Court confirming said plan of readjustment. That thereafter an appeal to the United States Circuit Court of Appeals for the Ninth Circuit was taken from said judgment in said proceeding by certain of the objectors here represented. That before said appeal could be heard and before the record on appeal was prepared or printed, the United States Supreme Court on May 25th, 1936, in *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513, adjudged the congressional legislation pursuant to which said proceeding was commenced and prosecuted, to-wit, said Act of Congress approved May 24, 1934, Chapter 345 and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States to be unconstitutional. Thereafter on March 16, 1937, appellants in said proceeding filed a motion in the United States Circuit Court of Appeal for the Ninth Circuit praying that the printing of the record on appeal be dispensed with and that

the cause be advanced on the calendar and submitted and that an order be made forthwith reversing the decree with directions to dismiss the cause on the ground that jurisdiction of the District Court to render said decree depended altogether on the Act of Congress held to be unconstitutional by the United States Supreme Court as aforesaid, and that the District Court had no jurisdiction to render the decree appealed from. Thereafter on the 12th day of April, 1937, the United States Circuit Court of Appeals granted said motion [188] and pursuant thereto reversed the decree of the District Court and by mandate directed this court to dismiss the entire case (89 Fed. (2d) 1002) and thereafter petition for certiorari was denied by the Supreme Court of the United States (302 U. S. 709). The Court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court and that there was no judgment on the merits in said proceeding. This court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise.

VIII.

The court finds that on the 27th day of July, 1937, and prior to the enactment of Public No. 302 enacted by the Seventy-fifth Congress and approved

August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States), petitioner herein brought a proceeding in the Superior Court, County of Merced, State of California, under the terms of an act of the legislature of the State of California passed in 1937 and therein designated as "Irrigation District Refinancing Act" Statutes of California, 1937, Chapter 24. That in and by said proceeding petitioner sought the benefits of said act with respect to a plan of readjustment of its bond indebtedness under which outstanding bonds of consenting bondholders would be retired by payment of \$515.01 for each \$1000 principal amount and interest due July 1, 1933, and subsequently, and pursuant to which, if and when said plan should be confirmed by the court the bonds of non-consenting bondholders would be condemned and their value fixed as in said act provided. That thereafter a hearing upon said plan was held by the court as provided by Section 8 of said Irrigation District Refinancing Act and [189] certain of the objectors here represented objected to the plan and appeared in opposition thereto. That thereafter on March 10, 1938, Albert F. Ross, Judge of the Superior Court presiding, announced that he was prepared to enter an interlocutory judgment pursuant to Section 8 of said Irrigation District Refinancing Act and directing that Findings and such interlocutory judgment be prepared by petitioner pursuant to said Section 8. That no findings or interlocutory judgment have been prepared,

signed or entered and nothing further has been done in said proceeding. That said action pending in the State Court does not prejudice or bar the commencement, maintenance or prosecution of this proceeding.

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing facts, the Court finds and concludes that petitioner, Merced Irrigation District, is entitled to an interlocutory decree and judgment approving and confirming said plan of composition as proposed and presented and contained in said petition and that said plan of composition and said decree of confirmation shall become and be binding upon all creditors affected by the plan if within the time prescribed in said decree or such additional time as the judge or the law may allow, the money to be delivered to the bondholders under the terms of the plan shall have been deposited with the court or such depository as the court may appoint or shall otherwise be made available for the bondholders affected by the plan. That thereafter upon compliance with the interlocutory decree petitioner shall be entitled to a final decree as provided by law.

Dated: February 21st, 1939.

PAUL J. McCORMICK,

Judge of the United States District Court.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Feb. 21, 1939. [190]

In the District Court of the United States for the
Southern District of California, Northern Di-
vision.

No. 4818 In Bankruptcy

In Proceedings for Confirmation of a Plan of Com-
position of Bond Indebtedness

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

INTERLOCUTORY DECREE

The petition of Merced Irrigation District for confirmation of a plan of composition of its bond indebtedness heretofore came on duly and regularly for hearing before this Court, said Irrigation District appearing by its counsel, C. Ray Robinson, Hugh K. Landram and Stephen W. Downey, and objectors appearing by counsel as follows: Messrs. Freidenrich & Selig and Kirkbride & Wilson, appearing for Claire S. Strauss; Messrs. Brobeck, Phleger & Harrison, appearing for Florence Moore, et al; Messrs. tum Suden and tum Suden appearing for Minnie Rigby and Richard tum Suden as executors, etc., of the estate of Wm. A. Lieber; Hugh K. McKevitt, Esq., appearing for Pacific National Bank of San Francisco; Charles L. Childers, Esq., appearing for West Coast Life Insurance Company; [191] Clark, Nichols & Eltse appearing for Mary E. Morris; Chase, Barnes & Chase, Esqs.,

appearing for R. D. Crowell and Belle Crowell and Coburn Cook, Esq., appearing for Milo W. Bekins, et al. Thereupon the court proceeded to hear the allegations and proofs in support of said petition and plan of composition and all matters and things pleaded and offered to controvert the facts in said petition and in opposition to said plan of composition. The said petition and said matters and objections having been duly and fully heard and argued and the hearing as to all parties having been concluded and the matter duly submitted to the Court by and on behalf of all parties, and the Court having considered all objections to said petition and said plan of composition, and having filed herein a memorandum setting forth its conclusions with respect to the facts and the law, and having made and entered its written Findings of Fact and Conclusions of Law in addition to those set forth in said Memorandum, and having found and now finding as follows, to-wit:

1. That petitioner, Merced Irrigation District, is an irrigation district duly formed, organized and existing under and by virtue of the provisions of the California Irrigation District Act of the State of California and said District is an eligible petitioner within the terms and meaning of Public No. 302 enacted by the Seventy-fifth Congress and approved August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States) and that the petition herein was filed pursuant to

the provisions of said Act approved August 16, 1937.

2. That petitioner is located wholly in the County of Merced, in the Southern Judicial District of California, Northern Division, and within the territorial jurisdiction of this court; that proof of due publication and mailing of the notice to creditors heretofore ordered by this Court has been duly filed; that such notice was first duly published as required by law and the order of this Court, and that copies thereof were duly mailed to each of the [192] creditors at their last known postoffice addresses at least sixty (60) days before the date fixed for hearing and as required by law and this court. That notice has been duly and regularly given in time, form and manner as required by law and this Court and that said petition was duly and regularly continued from time to time until Monday the 21st day of November, 1938, at 10 o'clock A. M. of said day when said petition and all objections thereto came duly and regularly on for hearing and were heard.

3. That the filing of the petition herein was authorized by proper resolution duly passed and adopted by the Board of Directors of petitioner prior to the filing thereof and that the fees required by the act hereinbefore mentioned were duly paid.

4. That petitioner, Merced Irrigation District, is insolvent and unable to meet its debts as they

mature and desires to effect a plan of composition of its outstanding bond indebtedness. That petitioner did heretofore duly adopt such plan of composition and that said plan of composition is set forth in the petition herein and is as follows, to-wit:

“That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent [193] to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums

which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum. [194]

“The district, therefore, by such plan of composition proposes and offers the holders of its

outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto."

That the plan of composition as offered by the petitioner herein is fair, equitable and for the best interests of its creditors and does not discriminate unfairly in favor of or against any creditor or creditors or class of creditors; that the plan of composition complies with the provisions of Section 83, Chapter IX of the Bankruptcy Act of the United States, and all of the provisions of Public No. 302 enacted by the Seventy-fifth Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted and approved in writing by or on behalf of creditors of petitioner owning and holding more than ninety per cent (90%) of the aggregate amount of claims of all classes affected by such plan, excluding, however, claims owned, held or controlled by petitioner; that all amounts to be paid by petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable and that the offer of the plan and its acceptance are in good faith and petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the terms thereof.

5. That prior to the filing of the petition herein the Reconstruction Finance Corporation, an agency of the United States pursuant to contract with petitioner, purchased at the composition rate aforesaid, and ever since has owned, held and controlled and [195] now owns, holds and controls, over 90% of the outstanding bond indebtedness of said District, to-wit, the Reconstruction Finance Corporation now owns, holds and controls approximately Fourteen Million Seven Hundred Two Thousand Dollars (\$14,702,000.00) principal of the outstanding Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) principal bond indebtedness of said District. That said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds so owned, held and controlled by it. That there are no bonds owned, held or controlled by said petitioner district. That before the filing of the petition herein, said Reconstruction Finance Corporation, in writing, accepted the plan of composition hereinbefore set forth and its acceptance is attached to the petition herein.

6. That all of the allegations and averments set forth in said petition for confirmation of the plan of composition of bond indebtedness are true; and that all the denials of said petition set forth in the answers of objectors are untrue.

7. That heretofore on the 18th day of April, 1935, petitioner herein filed in this Court a peti-

tion for debt readjustment under and pursuant to an Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States. That by said proceeding petitioner sought to confirm a plan of readjustment of its bond indebtedness under which the holders thereof would receive \$515.01 for each \$1000 bond and interest coupons due July 1, 1933 and subsequently thereto. That thereafter on the 4th day of March, 1936, judgment was entered [196] by the above Court confirming said plan of readjustment. That thereafter an appeal to the United States Circuit Court of Appeals for the Ninth Circuit was taken from said judgment in said proceeding by certain of the objectors here represented. That before said appeal could be heard and before the record on appeal was prepared or printed, the United States Supreme Court on May 25th, 1936, in *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513, adjudged the congressional legislation pursuant to which said proceeding was commenced and prosecuted, to-wit, said Act of Congress approved May 24, 1934, Chapter 345 and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States to be unconstitutional. Thereafter on March 16, 1937, appellants in said proceeding filed a motion in the United States Circuit Court of Appeals for the Ninth Circuit praying that the printing of the record on appeal be dispensed with and that the

cause be advanced on the calendar and submitted and that an order be made forthwith reversing the decree with directions to dismiss the cause on the ground that jurisdiction of the District Court to render said decree depended altogether on the Act of Congress held to be unconstitutional by the United States Supreme Court as aforesaid, and that the District Court had no jurisdiction to render the decree appealed from. Thereafter on the 12th day of April, 1937, the United States Circuit Court of Appeals granted said motion and pursuant thereto reversed the decree of the District Court and by mandate directed this court to dismiss the entire case (89 Fed. (2d) 1002) and thereafter petition for certiorari was denied by the Supreme Court of the United States (302 U. S. 709). The court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon the court [197] and that there was no judgment on the merits in said proceeding. The court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise.

8. The court finds that on the 27th day of July, 1937, and prior to the enactment of Public No. 302 enacted by the Seventy-fifth Congress and approved

August 16, 1937 (now designated as Chapter IX of the Bankruptcy Act of the United States), petitioner herein brought a proceeding in the Superior Court, County of Merced, State of California, under the terms of an act of the legislature of the State of California passed in 1937 and therein designated as "Irrigation District Refinancing Act" Statutes of California, 1937, Chapter 24. That in and by said proceeding petitioner sought the benefits of said act with respect to a plan of readjustment of its bond indebtedness under which outstanding bonds of consenting bondholders would be retired by payment of \$515.01 for each \$1,000 principal amount and interest due July 1, 1933, and subsequently, and pursuant to which, if and when said plan should be confirmed by the court the bonds of non-consenting bondholders would be condemned and their value fixed as in said act provided. That thereafter a hearing upon said plan was held by the court as provided by Section 8 of said Irrigation District Refinancing Act and certain of the objectors here represented objected to the plan and appeared in opposition thereto. That thereafter on March 10, 1938, Albert F. Ross, Judge of the Superior Court presiding, announced that he was prepared to enter an interlocutory judgment pursuant to Section 8 of said Irrigation District Refinancing Act and directed that Findings and such interlocutory judgment be prepared [198] by petitioner pursuant to said Section 8. That no findings or interlocutory judgment have been prepared, signed or

entered and nothing further has been done in said proceeding. That said action pending in the State Court does not prejudice or bar the commencement, maintenance or prosecution of this proceeding.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the plan of composition as proposed and presented and contained in said petition be and the same is hereby confirmed and approved.

That all of the outstanding bonds and other indebtedness of petitioner that are affected by the plan as set forth, itemized and enumerated in the petition in this cause are of one and the same class, are payable without preference out of funds derived from the same source or sources, and are hereby allowed as obligations of the petitioner, whether presented or not, and that the several holders thereof are entitled to participate ratably in the distribution of the funds in accordance with the plan of composition and the decrees of this court as hereinafter provided.

That in order to provide the funds necessary to pay the incidental expenses and to pay for the outstanding bonds of the petitioner as contemplated by the plan of composition aforesaid and the orders of this court, petitioner is hereby authorized forthwith to duly issue and sell its refunding bonds to the Reconstruction Finance Corporation in amounts required to pay such incidental expenses and to pay the sum equal to 51.501 cents on the dollar of the principal amount of its outstanding bonds (not pur-

chased by the Reconstruction Finance Corporation) and to repay the Reconstruction Finance Corporation the money expended by it, to-wit: 51.501 cents on the dollar on the principal amount of [199] the outstanding bonds purchased by it. That the old bonds so purchased by the Reconstruction Finance Corporation will thereupon be cancelled and returned to petitioner and that each and all of said refunding bonds so issued and sold by the petitioner to the Reconstruction Finance Corporation, as provided herein, are hereby declared to be valid obligations of such district and shall not at any time be affected by the plan of composition, or these proceedings.

That during the pendency of these proceedings the Reconstruction Finance Corporation is authorized to purchase from the holders thereof any of the outstanding bonds of petitioner upon the following terms and conditions, to-wit: The Reconstruction Finance Corporation to pay the sum of 51.501 cents on each dollar of the principal amount of the outstanding bonds, paying nothing on interest, and deducting from said amounts for missing coupons as provided in this decree for payment of the outstanding bonds by the disbursing agent. That when purchased, as provided in this paragraph, the old bonds shall be delivered to the Reconstruction Finance Corporation and held by it as security for the funds furnished by it for such purpose, with interest thereon at 4% per annum, until such time as it receives from petitioner its refunding bonds

for such disbursements and interest, or petitioner may pay such interest and deliver bonds for the principal.

That the petitioner within sixty (60) days from the time this decree becomes final, or such additional time as the judge may allow, set aside and deposit in trust with the Treasurer of Merced Irrigation District, who is hereby appointed as disbursing agent of this court, the sum necessary to pay the holders of its outstanding bonds, other [200] than bonds which shall have been purchased by the Reconstruction Finance Corporation as herein provided 51.501 cents on the dollar of the unpaid principal amount thereof, excluding all interest due or to become due and which matured July 1, 1933, and subsequently thereto, and the holders of said bonds be and they are hereby required to deposit said bonds with all unpaid interest coupons attached with the disbursing agent before payment is made as herein provided; that if any bonds are so deposited with any unpaid interest coupons due on or before July 1, 1934, missing, the disbursing agent shall make a deduction from the amount to be paid therefor, a sum equal to 44.78 cents for each dollar of the face amount of such missing coupons, and if any bond be presented with any unpaid interest coupons maturing after July 1, 1934, missing, deductions shall be made from the amount to be paid therefor equal to the full face value of the missing coupons. In case any deductions are made on ac-

count of missing coupons, and such coupons are afterwards deposited within the time prescribed by this decree, there shall be paid to the holder of such missing coupons the amount deducted therefor; that when payments shall have been made for the old bonds and coupons as provided in the plan of composition and this decree, the disbursing agent shall mark said bonds and coupons so paid "Cancelled" and return them to the petitioner.

That in the event any of the old bonds and interest coupons are not surrendered to the disbursing agent within sixty (60) days after receipt by such agent of the money with which to retire the same, or such additional time as the judge may allow, then the proportionate sum to which the holders thereof may be entitled under the plan of composition, and terms of this decree, shall be paid by the disbursing agent to the clerk of this court as Registrar, and thereafter paid by him to the holders of such bonds in [201] accordance with the provisions of this decree and such further decrees of this court as made in reference to the payment of such bonds.

That the clerk of this court shall cause to be published in the Merced Sun-Star and The Wall Street Journal, Pacific Coast Edition, newspapers published in Merced and San Francisco, respectively, for two successive issues notice to the holders of the outstanding bonds of the petitioner directing every holder thereof to deposit any and all bonds of the petitioner with the disbursing agent within the sixty

(60) day period above provided or thereafter with the clerk of this court for payment in accordance with this decree or be forever barred from claiming or asserting as against petitioner or any individually owned property located within petitioner district or the owners thereof any claim or lien arising out of said bonds; provided, however, that nothing contained herein shall preclude the Reconstruction Finance Corporation from asserting its rights and claims under the old bonds so purchased by it to the extent and amount so expended in acquiring the same, with interest thereon at the rate of 4% per annum, until petitioner shall have delivered to the Reconstruction Finance Corporation its refunding bonds in form satisfactory to said Reconstruction Finance Corporation in the aggregate principal amount equal to the money so expended in acquiring such old bonds, with interest.

That after the expiration of sixty (60) days from the date of receipt of the funds to carry out the terms of the plan of composition and retire the outstanding indebtedness as provided in such plan, the disbursing agent shall make full and complete report to this court for confirmation, including an itemized statement of all receipts and disbursements together with a list of old bonds outstanding at the time of such report, showing serial number [202] of and amount of each outstanding unpaid bond.

That any and all holders of the outstanding indebtedness of petitioner district be and are hereby

enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien, by legal proceedings or otherwise, which they may have against petitioner or against any of the lands situated within petitioner district and held by individuals.

Dated February 21st, 1939 at 1:05 P. M.

PAUL J. McCORMICK,

Judge of the United States

District Court.

[Endorsed]: Interlocutory Decree. Filed Feb. 21,
1939. [203]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To Messrs Freidenrich & Selig; Kirkbride & Wilson; Brobeck, Phleger & Harrison; tum Suden and tum Suden; Hugh K. McKevitt; Charles L. Childers; Clark, Nichols & Eltse; Chase, Barnes & Chase, and W. Coburn Cook, Attorneys for Respondents:

You, And Each of You, Will Please Take Notice that the above entitled court duly made and entered its Findings of Fact and Conclusions of Law and its Interlocutory Decree in the above proceeding on the 21st day of February, 1939.

Dated: February 28, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND &
SEYMOUR,
STEPHEN W. DOWNEY,
Attorneys for Merced Irriga-
tion District.

[Endorsed]: Notice of Entry of Judgment. Filed
Mar. 3, 1939. (Affidavit of service attached.) [204]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Sacramento—ss.

A. M. Merz, being first duly sworn, deposes and
says:

That affiant is a citizen of the United States and
over the age of eighteen (18) years and not a party
to the above entitled cause; that affiant's business
address is 500 Capital National Bank Building, Sev-
enth and J Streets, City of Sacramento, County of
Sacramento, State of California, where the mailing
hereinafter set forth occurred; that on February
28th, 1939, affiant served the Notice of Entry of
Judgment in the above-entitled matter upon: Hugh
K. McKevitt, Esq., Messrs tum Suden & tum Suden,

Messrs Brobeck, Phleger & Harrison, Messrs Chase, Barnes & Chase, Messrs. Clark, Nichols & Eltse, Messrs. Kirkbride & Wilson, Charles L. Childers, Esq., Messrs Freidenrich & Selig, and Coburn Cook, Esq., attorneys for objectors in the above entitled cause, by depositing copies thereof in the United States Post Office in the City of Sacramento, County of Sacramento, State of California, in sealed envelopes, with postage fully prepaid thereon, addressed as follows: [205]

Hugh K. McKeivitt, Esq.,
Russ Building,
San Francisco, California.

Messrs. tum Suden & tum Suden,
Attorneys at Law,
605 Market Street,
San Francisco, California.

Messrs. Brobeck, Phleger & Harrison,
Crocker Building,
San Francisco, California.

Messrs. Chase, Barnes & Chase,
Attorneys at Law,
Title Insurance Building,
433 South Spring Street,
Los Angeles, California.

Messrs. Clark, Nichols & Eltse,
Attorneys at Law,
American Trust Company Bldg.,
Berkeley, California.

Messrs. Kirkbride & Wilson,
Attorneys at Law,
307 B Street,
San Mateo, California.

Charles L. Childers, Esq.,
Attorney at Law,
207 Bank of America Bldg.,
El Centro, California.

Messrs. Freidenrich & Selig,
Attorneys at Law,
Stock Exchange Bldg.,
San Francisco, Calif.

Coburn Cook, Esq.,
Attorney at Law,
Turlock, California.

That Messrs. Downey, Brand & Seymour, attorneys for the party on whose behalf said service was made, have their offices in the City of Sacramento, County of Sacramento, State of California; that the said persons upon whom service was made have their offices at the addresses hereinabove set after said names, said addresses being the last given by said persons on any document which they filed in the cause and served upon the parties on whose behalf service was made.

That there is a daily, regular communication by mail between Sacramento, California, and the places so addressed as aforesaid.

A. M. MERZ. [206]

Subscribed and sworn to before me this 1st day
of March, 1939.

[Notarial Seal]

VERLIE C. BRANSTETTER,
Notary Public in and for the
County of Sacramento, State
of California.

[Endorsed]: Filed Mar. 3, 1939. [207]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL

To: Merced Irrigation District, Petitioner in the
above entitled proceedings, and to Messrs.
Downey, Brand and Seymour, attorneys for
said Petitioner:

You and Each of You Will Please Take Notice
that Claire S. Strauss; Florence Moore, et al;
Minnie Rigby and Richard tum Suden, as executors
of the estate of Wm. A. Lieber; Pacific National
Bank of San Francisco; West Coast Life Insurance
Company; Milo W. Bekins, et al; and R. D. Crowell
and Belle Crowell, respondents and objectors to the
petition of petitioner above named, will on the 20th
day of March, 1939, at 10 o'clock A. M., in the court-
room of the above entitled court, in the Federal

Building, at Los Angeles, California, Honorable Paul J. McCormick, Judge, presiding, move the above entitled court for an order setting aside the interlocutory judgment and decree herein and granting a new trial in the above entitled cause, on the grounds that:

1. The evidence is insufficient to support the judgment and decree;
2. The judgment and decree is against the law.
3. Respondents and objectors have discovered new evidence since the decision in the cause above described, which with reasonable diligence they could not have discovered and produced at the trial, material to the issues herein, all as set forth in the affidavits of Lucius F. Chase, Walter Stange and John V. Murphy, marked, [208] respectively, Exhibits "A", "B" and "C", attached to written motion for new trial filed herein.

Said motion will be based on the minutes of the court, and upon all the testimony, evidence, records, papers and files in said proceeding, the affidavits appended to said motion, and the memorandum in support of motion for new trial appended to said motion.

Dated: March 3, 1939.

W. COBURN COOK

Per L. F. C.

CHARLES CHILDERS

Per L. F. C.

PETER TUM SUDEN

Per L. F. C.

DAVID FREIDENRICH

By LUCIUS F. CHASE

BROBECK, PHLEGER &

HARRISON,

By LUCIUS F. CHASE

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for respondents

and objectors above named.

[Endorsed]: Notice of Motion for New Trial.
Filed Mar. 3, 1939. [209]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Now come Claire S. Strauss; Florence Moore, et al; Minnie Rigby and Richard tum Suden, as executors of the estate of Wm. A. Lieber; Pacific National Bank of San Francisco; West Coast Life Insurance Company; Milo W. Bekins, et al; and R. D. Crowell and Belle Crowell, respondents and

objectors to the petition of petitioner above named, and move this court for an order setting aside the interlocutory judgment and decree herein and granting a new trial in the above entitled cause for the following reasons, to-wit:

1. The evidence is insufficient to support the judgment and decree;

2. The judgment and decree is against the law;

3. Respondents and objectors have discovered new evidence since the decision in the cause above described, which with reasonable diligence they could not have discovered and produced at the trial, material to the issues herein, all as set forth in the affidavits of Lucius F. Chase, Walter Stange and John V. Murphy, marked, respectively, Exhibits "A", "B" and "C", attached hereto and made a part hereof.

This motion is based upon the minutes of the court and upon all the testimony, evidence, records, papers and files in said proceeding, the affidavits appended hereto, and the memorandum in support [210] of motion for new trial appended to this motion.

Dated: March 3, 1939.

W. COBURN COOK,

Per L. F. C.

CHARLES CHILDERS,

Per L. F. C.

PETER TUM SUDEN,

Per L. F. C.

DAVID FREIDENRICH,

Per L. F. C.

BROBECK, PHLEGER &
HARRISON,

By LUCIUS F. CHASE

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE

Attorneys for respondents
and objectors above named.

[Endorsed]: Motion for New Trial. Filed Mar. 3,
1939. [211]

EXHIBIT A

[Title of District Court and Cause.]

AFFIDAVIT ON MOTION FOR NEW TRIAL

State of California,

County of Los Angeles—ss.

Lucius F. Chase, being duly sworn, deposes and
says:

That he is an attorney of record for respondents and objectors Belle Crowell and R. D. Crowell in the above entitled matter.

That among the issues involved in the above entitled case is the good faith of the petitioner herein, its solvency, and its plan of competition proposed by said petitioner.

That prior to the trial herein, affiant moved for and obtained an order for inspection of the records of the Merced Irrigation District, but at the request of counsel for said District this was not obtained until Saturday, November 19, 1938, just before the trial commenced on November 21, 1938; that at that time, affiant had no suspicion that the books and records of Merced Irrigation District were in anywise untrue or inaccurate, and that affiant and all other counsel for respondents, in the above entitled Court, assumed such records to be true and accurate, as petitioner is a public agency of the State of California.

That at the time of the inspection of the documents by affiant on Saturday, November 19, 1938, affiant discovered for the first time that petitioner made financial statements to Reconstruction Finance Corporation, copies of which are in [212] evidence, marked Exhibits "J" and "K", inconsistent with statements showing a liability of \$16,191,000.00, but aside from that fact, affiant was not advised or had any reason to believe that other records of petitioner were inaccurate.

That during the trial of the cause and on Wednesday, November 23, 1938, affiant, for the first time, discovered that in setting up the liabilities in the financial statement of the District herein, Exhibit 26, payments made to the Reconstruction Finance Corporation on account of interest, which, according to the opening statement of Mr. Downey, were by agreement credited on matured bond interest on bonds held by Reconstruction Finance Corporation, had not been applied as a credit on the matured bond interest liability, shown on said statement, Exhibit 26; affiant further discovered, at that time, that an additional item of credit in the amount of \$168,582.26 paid depositing bondholders on account of interest, had not been credited on the matured interest liability of the District, and that the amount of interest on matured obligations was overstated by the District in the amount of \$129,100.00, and such facts were brought out by the affiant through examination of the witness E. E. Neel. That affiant was not aware that there were any other or further discrepancies in said financial statement.

That Exhibit 26 was somewhat confusing to affiant, and after the trial and decision and in February, 1939, affiant submitted the same to John V. Murphy, a public accountant practicing in the City of Los Angeles, California, with offices at 512 Title Insurance Building, for further analysis, affiant was then advised, since the decision in this case, by

Mr. Murphy that, in the light of the admitted bond liability of \$16,191,000.00, there was a false overstatement of \$387,000.00 on the statement, Exhibit 26, as appears by the affidavit of the said John V. Murphy, on file herein. [213]

That thereafter, affiant employed Walter Stange, supervising accountant of the firm of Lybrand, Ross Bros. & Montgomery, to make a further analysis of Exhibit 26, and all other balance sheet exhibits, which analysis was made by Mr. Stange on March 2 and March 3, 1939, and for the first time affiant learned that there was an apparent omission of an asset from Exhibit 26 of approximately \$340,000.00, shown on previous statements of the District, Exhibits "J" and "K", being the current assessments receivable of the District, and was also advised by Mr. Stange that an examination of all of the accounts and evidence indicated the possibility that other assets of the District, in substantial amounts, may have been omitted from the said Exhibit 26.

That affiant, on examining the exhibits on Mar. 2, 1939, could find no evidence in the record of any independent audit for the petitioner. That if a new trial is granted, affiant proposes to make a careful investigation of the matters hereinabove set forth. That affiant could not, with due diligence, have ascertained the matters set forth in the affidavits of John V. Murphy and Walter Stange prior to or during the trial of the above entitled cause.

LUCIUS F. CHASE.

Subscribed and sworn to before me this 3rd day of March, 1939.

MARGUERITE THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Affidavit on Motion for a New Trial.
(Exhibit A.) Filed Mar. 3, 1939. [214]

EXHIBIT B

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
NEW TRIAL

State of California

County of Los Angeles—ss.

N. Walter Stange, being duly sworn, deposes and says:

That he is a Certified Public Accountant under Certificate No. 1259-E, State of California, and that he has been employed by Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, Los Angeles, California, for the past eight years and at the present time holds the position of supervising accountant with said firm.

That he has examined photostatic copies of Exhibits No. 25 and 26 and Exhibits lettered J, K, Z, E, D, X, in evidence in the above entitled cause on file in the offices of the Clerk of the District Court

of the United States for the Southern District of California in the Federal Building, Los Angeles, California, and has also examined pages 174 and 181 to 221, inclusive, and 284 to 339, inclusive, of a copy of transcript of testimony given at the trial of the above entitled cause at Fresno, California, said copy of transcript of testimony having been furnished by Mr. Lucius F. Chase, Attorney.

That it appears therefrom that Exhibit 26 is a balance sheet introduced by Merced Irrigation District purporting to set forth the true financial condition of the Merced Irrigation District as at November 1, 1938, prepared in accordance with the assumption that the district's indebtedness at that date included outstanding bonds in the amount of \$16,191,000.00, together with accrued interest [215] thereon but included no additional indebtedness to the Reconstruction Finance Corporation.

That in the opinion of the affiant, based upon the review of exhibits and transcript of testimony described above, and subject to the foregoing assumption as to the indebtedness of the District, the balance sheet of Merced Irrigation District as at November 1, 1938, appears to contain several items of overstatement of liabilities and appears not to contain several items of assets. These seeming inaccuracies are as follows:

Item 1: Liability for bonds outstanding is stated at \$387,000.00 for unpaid matured bonds and \$16,191,000.00 for capital liabilities, an aggregate liabil-

ity of \$16,578,000.00, whereas testimony indicates that total bonded indebtedness is \$16,191,000.00. Exhibit 26 therefore appears to overstate the liability for bonds by \$387,000.00.

Item 2: The liability for unpaid matured bond interest coupons is stated at \$5,076,185.00 which testimony indicates includes all coupons which have matured during the period July 1, 1933, to November 1, 1938, but includes no credit against this accrual for interest payments to the Reconstruction Finance Corporation during the period from October 4, 1935, to June 30, 1938, in the amount of \$824,684.59. It appears that the latter amount should be offset against the former in the balance sheet at November 1, 1938, in computing the accrued interest liability at that date.

Similarly, it appears that deduction of \$168,027.31 from interest liability should be made for the amount of interest paid to various depositaries for account of depositing bondholders for the periods from the date bonds were deposited to date of payment therefor by the Reconstruction Finance Corporation.

The statement at November 1, 1938 (Exhibit 26) therefore appears to *overtake* the liability for interest coupons by \$992,711.90. [216]

Item 3: Liability for accrued interest on registered bonds and coupons is stated at \$1,004,887.54 according to testimony and includes in the basis for computation all bond coupons matured subse-

quent to January 1, 1933, and prior to November 1, 1938, held by the Reconstruction Finance Corporation. From the point of view of said statement (Exhibit 26), it appears that the interest paid the Reconstruction Finance Corporation in the amount of \$824,684.59 should be deducted from the basis of computation to determine the interest accrual at November 1, 1938. The effect of this adjustment (assuming that the computation thereof reflected in Exhibit Z is correct) amounts to \$129,100.00. It appears therefore that interest liability is overstated in Exhibit 26 by the amount of this adjustment.

Item 4: The statement includes as a liability an item captioned "Balance 1938 Budget Operations (Est.) \$80,000.00". This appears to represent budget appropriation for expenditures to be made subsequent to November 1, 1938, not actual liabilities at that date. If this inference is true, it appears that liabilities are overstated in Exhibit 26 by the amount of this item.

Item 5: Comparison between balance sheets of the Merced Irrigation District as of December 31, 1937 (Exhibit J) and as of June 30, 1938 (Exhibit K), furnished the Reconstruction Finance Corporation, with the balance sheet as at November 1, 1938, (Exhibit 26) indicates that whereas the statements to the Reconstruction Finance Corporation include as assets the amount of unpaid tax assessments receivable from landowners in the amounts

of \$416,879.75 and \$218,310.13, as at December 31, 1937 and June 30, 1938, respectively, the balance sheet at November 1, 1938, seemingly omits any similar item from the list of assets. Exhibit 25 shows the amount of \$296,096.00 unpaid taxes receivable as at November 1, 1938 (without indicating how much, if any, from the 1938-1939 levy may properly be included as a receivable as an asset at November 1, 1938), [217] and evidence indicates a levy of approximately \$340,000.00 for the fiscal year 1938-1939). If the inference is correct that these items have been omitted from the balance sheet at November 1, 1938, it appears that total assets stated therein have been understated by the entire amount of taxes receivable.

Item 6: Comparison of Exhibits J and K with Exhibit 26 indicates that the District has an inventory (presumably of current supplies) which would ordinarily be included in a list of its assets and is so treated in the balance sheets as at December 31, 1937, and as at June 30, 1938, furnished to the Reconstruction Finance Corporation. It does not appear that the item of inventory has been included in the balance sheet at November 1, 1938, which, if the inference is true, indicates an understatement of assets by the amount of the inventory.

Attached hereto are photostatic copies of Exhibits 25, 26, part of Exhibits J and K, and Exhibit Z.

Further affiant sayeth not.

WALTER STANGE.

Subscribed and sworn to before me this 3rd day of March, 1939.

[Seal] MARGUERITE THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Affidavit in Support of Motion for New Trial (Exhibit B). Filed Mar. 3, 1939. [218]

EXHIBIT C

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN V. MURPHY

State of California.

County of Los Angeles—ss.

John V. Murphy, being first duly sworn, deposes and says:

That he is a public accountant practicing in the City of Los Angeles, admitted to practice before the Treasury Department of the United States and the Corporation Commissioner of the State of California;

That from 1920 to 1924 he was a qualified accountant in Brisbane, Australia, and since said date has practiced his profession in the cities of San Francisco and Los Angeles, California;

That during the period from May, 1926 to December, 1927, he was a senior accountant employed by Lybrand, Ross Bros. & Montgomery, and that subsequently he was employed as senior accountant

for the firm of Haskins & Sells; that for the past ten (10) years he has practiced his profession as public accountant in the City of Los Angeles;

That at the request of Mr. Lucius F. Chase, during the months of February and March, 1939, he examined photostatic copies of Exhibits Nos. 25, 26, "J", "K" and "Z" in evidence herein, and relevant portions of copies of transcript of testimony furnished by the said Lucius F. Chase; that from such examination it is the opinion of affiant that said Exhibit 26 falsely over-states the principal bond obligation of the said Merced Irrigation District [220] by the sum of Three Hundred Eighty-Seven Thousand (\$387,000.00) Dollars;

That affiant has examined the affidavit of Walter Stange, attached hereto, and in general, concurs in the conclusions of Mr. Stange.

JOHN V. MURPHY.

Subscribed and sworn to before me, this 3rd day of March, 1939.

[Seal] MARGUERITE THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Affidavit of John V. Murphy (Exhibit C). Filed Mar. 3, 1939. [221]

[Title of District Court and Cause.]

AFFIDAVIT

State of California

County of Sacramento—ss.

Charles Lumbard, being first duly sworn, on his oath deposes and says:

That he is a Certified Public Accountant under Certificate No. 168 issued by State Board of Accountancy; that he is also a member of the American Institute of Accountants and of the California State Society of Certified Public Accountants; that for the last few years he has been specializing in governmental accounting, including state, city and county and irrigation and reclamation district accounting; that he has audited the County of Sacramento on two occasions, to-wit: in 1919 and 1934; that he has audited the County of Placer with William Dolge, Certified Public Accountant of San Francisco; that he has audited Plumas County with William Dolge, Certified Public Accountant of San Francisco, and that at the present time he is auditing in Sutter County the offices of Auditor, Tax Collector-Treasurer, Board of Supervisors and that said audit in Sutter County also covers seven reclamation districts and two levee districts: that he has also audited the following Irrigation Districts, to-wit: Fair Oaks Irrigation [222] District, Carmichael Irrigation District, Oroville-Wyandotte Irrigation District (special investigation), Thermo-

lito Irrigation District (special investigation) and Citrus Heights Irrigation District, at which latter District he is now the auditor; that recently he was appointed Referee by the District Court of Appeal, Third Appellate District, to report on the finance of Reclamation District No. 108 in *Mary Morris v. California Gibson*, as Treasurer of Colusa County, (decided January 26, 1939, reported in 96 Cal. App. Decisions, 347).

That affiant has examined copy of Exhibit 26 introduced in evidence in the above case which purports to be a balance sheet of the Merced Irrigation District as of November 1, 1938; that affiant assumes from said balance sheet that the outstanding principal bond issue of said District is \$16,191,000.00, of which sum \$387,000.00 principal amount is matured and unpaid; that upon said assumption affiant is of the opinion that said balance sheet does not overstate the bond liabilities of said District. In the opinion of affiant, the \$387,000.00 entry under the heading of "Unpaid Matured Bonds" is an internal entry properly made to show a true picture of the financial condition of said District. Affiant is further of the opinion that the accounting procedure followed in said Exhibit 26 follows exactly the procedure as set forth in the system of accounting for irrigation districts operating under the California Irrigation District Act, which was adopted by the California Irrigation District Association in November, 1928, and which is primarily designed to

show the status of the various funds of an irrigation district. Under said system the bond account under "Capital Liabilities" in said statement should not be reduced until the bonds are actually redeemed, and matured [223] bond obligations should be shown under "Current Liabilities" and charged against the accounting item "Bond Fund Surplus" as was done in Exhibit 26, to-wit: The item "Unpd. Matured Bonds" in the amount of \$387,000.00 appearing in "Current Liabilities" (Exhibit 26) is voided by being included in the deficit item shown under "Capital Liabilities" "Bond Fund Surplus (Old)" in the amount of \$6,466,962.75 (red). Said accounting procedure, including solely the items discussed herein would be illustrated as follows:

Current Liabilities

Unpd. Matured Bonds.....	\$387,000	\$387,000
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Capital Liabilities

Bond Fund Surplus (Old).....	-387,000	-387,000
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Bond Accounts	\$16,191,000	16,191,000
---------------------	--------------	------------

\$16,191,000

\$16,191,000

(-indicates deduction)

In reading a financial statement of the type exemplified in Exhibit 26 the balance sheet must be looked at as a whole and in light of the system followed in the manual governing the system of accounting for irrigation districts above referred to and as so read, in the opinion of affiant, the bond items are correctly set forth.

CHARLES LUMBARD.

Subscribed and sworn to before me this 10th day of March, 1939.

[Notarial Seal] VERLIE C. BRANSTETTER,
Notary Public in and for the County of Sacramento,
State of California. [224]

[Title of District Court and Cause.]

AFFIDAVIT

State of California

County of Sacramento—ss.

H. P. Sargent, being first duly sworn, deposes and says:

That he is Secretary of Merced Irrigation District and has been such Secretary since 1924. That as such Secretary he is in charge of the books, records and accounts of said District, and that E. E. Neel, Auditor of said District, works under his direction.

That affiant is custodian of, and entirely familiar with, all of said records, books and accounts, and that they are true and accurate to the best of affiant's knowledge and belief. That no asset of said District has ever been suppressed in this proceeding and no liability has ever been overstated, and all assets and liabilities have been fully set forth in the evidence and exhibits of this proceeding. That since 1930 when said District first went into

default, the Bondholders Protective Committee and the bondholders protesting the plan of refinancing have been consistently and uniformly furnished and supplied with information requested by them concerning the District finances and other matters and, when requested, they have been given access to the [225] records. That before and during the trial of the first bankruptcy action in Fresno in 1936, and before and during the trial of the proceeding in the State Court at Merced under the State Refinancing Act, and before and during the trial of this proceeding in Fresno in November, 1938, affiant caused all relevant data respecting finances and other matters to be assembled for convenient use in said trials and supplied protestants and their counsel with all information they requested. That affiant caused exhibits to be made which would set up the financial statement of the District from every point of view, and for at least two (2) months preceding the trial of this proceeding all clerical, accounting and secretarial employees of said District devoted the major part of their time and attention to assembling data for the convenient use of Court and counsel herein. That on November 15, 1938, in the course of an argument in Los Angeles on motion to quash service of subpoena on F. J. Keenan, Mr. Lucius F. Chase asked for and with consent of counsel for the District was granted permission to examine the files relating to the District's transactions with the Reconstruction Finance Corporation at Merced. That

said date of examination was fixed for November 19, 1938, and on that date Mr. Chase and Mr. Cook examined said files at Merced and were given all information which they requested.

Respecting Item No. 1 referred to in affidavit of N. Walter Stange on motion for new trial herein, affiant avers that consistently throughout this proceeding and at each and every step therein, the District has asserted that it has an outstanding principal bond issue of \$16,190,000.00 and that it has never at any time, in this proceeding or in any of the testimony or exhibits herein or elsewhere, asserted that it had a liability on outstanding principal bonds of \$16,578,000.00. That the District has [226] never claimed in this proceeding or at any other time that it has a bond liability of \$387,000.00 in excess of \$16,191,000.00.

That Items Nos. 2 and 3 referred to in said affidavit of N. Walter Stange were not intended to be included in Exhibit No. 26 and were not properly a part of Exhibit No. 26, in the opinion of affiant, but affiant avers that all the facts and circumstances in connection with said items appear in the testimony and record of this case, including the opening statement of Mr. Downey, counsel for the District, the testimony of E. E. Neel and in Petitioner's Exhibit No. 22 and Respondents' Exhibit "Z".

Respecting Item No. 4 referred to in the affidavit of N. Walter Stange, affiant avers that said item

represents the balance of the expenditures for 1938 against the tax receipts, tax certificates and power revenue for said year. Affiant further avers that the expenditures for 1938 against said revenues for 1938 are a proper item for inclusion in said Exhibit No. 26.

With respect to Item No. 5 referred to in the affidavit of N. Walter Stange, affiant avers that the item therein referred to as having been omitted from the balance sheet of November 1, 1938, to-wit, a tax levy of approximately \$340,000.00 for the fiscal year 1938-39, was properly omitted from said balance sheet. Affiant further avers that the facts concerning said levy are fully set forth in the record herein. In this connection affiant avers that the 1938-39 levy of \$337,369.00 was set in September 1938 by the Directors of the District under Section 11 of the California Districts Securities Commission Act, subject to the approval of said Commission, and represented a portion of the sum necessary for operating expenses during the year 1939. That neither said levy nor the [227] operating expenses for 1939 are included in Exhibit No. 26 and neither of said items was properly a part thereof.

Respecting Item No. 6 referred to in said affidavit, affiant avers that the list of assets set forth in the inventory therein referred to is included in the item set forth in Exhibit No. 26 under the caption "General Equipment—Capital Assets—\$98,204.49", and

that all items included in said inventory have been included in said balance sheet.

Affiant denies there was any inconsistency between the financial statements made to the Reconstruction Finance Corporation and any other financial statements made by the District, and avers that all facts with respect to said alleged inconsistency have been fully brought out in the evidence and exhibits in this proceeding; avers that the Merced Irrigation District has been audited annually by an independent auditor and that for several years last past said audit has been made by Harry Wiet & Co., Merced, California.

H. P. SARGENT.

Subscribed and sworn to before me this 10th day of March, 1939.

[Notarial Seal] VERLIE C. BRANSTETTER,
Notary Public in and for the County of Sacramento,
State of California. [228]

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
County of Sacramento—ss.

E. E. Neel, being first duly sworn, upon his oath deposes and says:

That he is now and has been for many years last

past, Auditor for Merced Irrigation District; that the books and financial records of said District, according to the best of his knowledge and belief, have been kept honestly, accurately and truly; that during the course of the trial of the above case at Fresno, California, affiant met frequently with Mr. Chase and other counsel for protestant bondholders outside of the courtroom and gave them all information requested, fully, completely and accurately, according to the best of his knowledge and belief; that in that connection he worked with counsel of protesting bondholders in preparing exhibits and other testimony and disclosed to them fully and frankly all matters concerning the District finances with respect to which they interrogated him.

With respect to Item No. 1 referred to in the affidavit of N. Walter Stange on motion for new trial, affiant avers that Exhibit No. 26 shows the true status of the various funds of the District as of November 1, 1938; that the liabilities of the [229] District, as shown, were outstanding bonds in amount of \$16,191,000.00 (as testified to throughout the trial); that the General Fund liabilities were \$102,549.93 and that there was a liability of \$5,076,185.00 represented by matured bond interest coupons and a further liability of \$1,004,887.54, being interest on registered coupons and bonds, making a grand total of \$22,374,622.47 liabilities of the District, this amount being in excess of the assets (Exhibit No. 26) by \$1,895,721.21. If reference is made

to Respondents' Exhibit Z, it will be found that the same result is reached after adjustment made for claimed credits of \$1,122,366.00.

Respecting Items Nos. 2 and 3 referred to in said affidavit of N. Walter Stange, affiant avers that all facts with respect thereto were testified to by him at the trial and are shown in Exhibit "Z", and that in the opinion of affiant they were not properly a part of Exhibit No. 26.

Referring to Item No. 4 in the affidavit of N. Walter Stange, affiant avers that the cash balance on hand in the general fund November 1, 1938, as shown by Exhibit No. 26, is the sum of \$527,243.36, which sum includes money received from the 1937-38 tax assessment and other revenues which are placed in the general fund for the purpose of providing for the budget requirements for the calendar year 1938; that on November 1, 1938 there remained two months of District operations, estimated at \$80,000.00, to be paid out of said funds so provided; the \$80,000.00 estimated cost for the months of November and December, 1938 represented an actual obligation or liability of the District against the money which had been collected and placed in the general fund for the meeting of that particular requirement and is a proper charge against the fund; similarly, it would be improper, in affiant's opinion, to [230] claim all or any part of an assessment levied for a particular obligation as an asset without setting up or showing the obligation for which the assessment was levied.

That respecting Item No. 5 referred to in the affidavit of N. Walter Stange, affiant avers that the unpaid tax assessments of \$416,879.75 appearing in a report to the Reconstruction Finance Corporation as of December 31, 1937, were reduced to \$218,310.13 on June 30, 1938 by credits for lands deeded, partial payment credits, and collection of taxes; that the unpaid assessments on June 30, 1938 in the amount of \$218,310.13 were further reduced by credits from lands deeded, partial payment credits and tax collections during the period July 1 to November 1, 1938, to \$206,096.93, shown by Exhibit No. 25; that the amount of \$206,096.93 represents all uncollected assessments appearing on the District tax rolls on November 1, 1938 and is therefore shown on Exhibit No. 26 as a current asset; that the 1938-39 levy of \$337,369.00 was set in September, 1938; that the first installment thereof was not payable until the last Monday in December, 1938, and the purpose of said levy was to take care of the operating expenses in 1939, no part of which was included in Exhibit No. 26.

Referring to Item No. 6 in the affidavit of N. Walter Stange, affiant avers that all items of inventory have been included in the balance sheet of November 1, 1938 as of that date, and in this connection affiant avers that said items appear under "Capital Assets—General Equipment—\$98,204.49"; that the detail of said "General Equipment" is as follows:

Inventory—Lumber, gates, etc.....	\$33,998.48
Equipment—Autos, tractors, machinery, etc.	64,206.01
<hr/>	
Total	\$98,204.49

[231] That said figure represents an advance of \$7,631.55 over the same asset items appearing in the District's report to the Reconstruction Finance Corporation as of June 30, 1938 (Exhibit "K") and being as follows:

Inventory	\$28,678.95
Equipment	61,893.99
<hr/>	
Total	\$90,572.94

Affiant further avers that in Exhibit No. 26, included in the item of Net Capital Assets in the sum of \$18,649,793.20, there is included the cost of all physical properties purchased by the District for drainage and irrigation purposes and otherwise.

E. E. NEEL.

Subscribed and sworn to before me this 10th day of March, 1939.

VERLIE C. BRANSTETTER,

[Notarial Seal]

Notary Public in and for the County of Sacramento,
State of California.

[Endorsed]: Affidavits. Filed Mar. 13, 1939. [232]

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year of our Lord one thousand nine hundred and thirty-nine.

Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

This matter coming on for hearing on motion of Respondents and Objectors Claire S. Strauss, et al. for a new trial, pursuant to notice filed March 3, 1939; Stephen W. Downey, Esq., appearing for the Debtor; Lucius P. Chase, Chas. L. Childers, and Peter Tum Suden, Esqs., appearing for the moving respondents; and, A. H. Bargion being present as the official stenographic reporter of the testimony and the proceedings:

Now, at 10:10 A. M., counsel answer to the call of the case, and the Court thereupon orders hearing herein to proceed.

Lucius P. Chase, Esq., argues to the Court in support of said motion; and at 10:50 A.M. Peter Tum Suden, Esq., makes a statement; following which, at 11 o'clock A.M. Chas L. Childers, Esq., makes a statement; whereupon, at 11:05 o'clock A.M. Stephen W. Downey, Esq., argues to the Court in opposition to said motion.

The Court now orders said motion stand submitted for decision. [233]

United States
Circuit Court of Appeals

For the Ninth Circuit.

WEST COAST LIFE INSURANCE COMPANY,
a corporation, PACIFIC NATIONAL BANK
OF SAN FRANCISCO, a national banking
association, et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT and RE-
CONSTRUCTION FINANCE CORPORATION,
Appellees.

Transcript of Record

In Four Volumes

VOLUME II

Pages 267 to 554

Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

FILED

SEP 11 1939

United States
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WEST COAST LIFE INSURANCE COMPANY,
a corporation, PACIFIC NATIONAL BANK
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CONSTRUCTION FINANCE CORPORATION,
Appellees.

Transcript of Record

In Four Volumes

VOLUME II

Pages 267 to 554

Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 28th day of March in the year of our Lord one thousand nine hundred and thirty-nine Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

The motion for a new trial of Claire S. Strauss, Florence Moore, et al., Minnie Rigby and Richard tum Suden, as executors of the estate of Wm. A. Lieber, Pacific National Bank of San Francisco, West Coast Life Insurance Company, Milo W. Bekins, et al., and R. D. Crowell and Belle Crowell, respondents and objectors, having been duly considered, together with all affidavits and exhibits in support thereof, and upon re-examination of the entire record in this proceeding.

It is now ordered that said motion for new trial be, and the same is hereby denied in toto. Exceptions noted and allowed to each movant severally and to all movants collectively. [234]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR
NEW TRIAL.

The motion for new trial of Claire S. Strauss; Florence Moore, et al.; Minnie Rigby and Richard tum Suden, as executors of the estate of Wm. A. Lieber; Pacific National Bank of San Francisco; West Coast Life Insurance Company; Milo W. Bekins, et al.; and R. D. Crowell and Belle Crowell, respondents and objectors, having been duly considered, together with all affidavits and exhibits in support thereof, and upon re-examination of the entire record in this proceeding. It Is Now Ordered that said motion for new trial be and the same is hereby denied in toto. Exceptions noted and allowed to each movant severally and to all movants collectively.

Dated this March 28, 1939.

PAUL J. McCORMICK,
United States District Judge.

[Endorsed]: Filed Mar. 28, 1939. [235]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT (UNDER RULE 73).

Notice is hereby given that West Coast Life Insurance Company, a corporation; Pacific Na-

tional Bank of San Francisco, a national banking association; Mary E. Morris, R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; [236] Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante

Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, creditors of Merced Irrigation District and respondents in this cause hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Interlocutory Decree entered in this action on February 21, 1939, the same being the Interlocutory Decree entered after the hearing upon the plan of composition and from the whole thereof.

Dated: March 28th, 1939.

CHAS. L. CHILDERS,

Attorney for West Coast Life Insurance Company.

HUGH McKEVITT,

Attorney for Pacific National Bank of San Francisco. [237]

CLARK, NICHOLS & ELTSE

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and
Belle Crowell.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as
Executrix, and Richard tum Su-
den as Executor, of the Last Will
of William A. Lieber, Alias, De-
ceased.

BROBECK, PHLEGER & HARRI-
SON,

By EVAN HAYNES,

Attorneys for Florence Moore;
American Trust Company as
trustee under a certain agreement
between R. S. Moore and Ameri-
can Trust Company dated Decem-
ber 15, 1927; Crocker First Na-
tional Bank as trustee under a
certain agreement between Flor-
ence Moore and Crocker First
Federal Trust Company, dated
December 15, 1937.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins; deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; [238] D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J.

Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. pointed by the Will of Martin Fine; Mrs. J. H. Fine, F. F. G. Harper; and W. S. Jewell.

(Copies mailed to Stephen H. Downey, C. Ray Robinson, Hugh Landram, Attorneys for Debtor & to Reconstruction Finance Corp. 3/30/39 E.L.S.)

[Endorsed]: Notice of Appeal. Filed Mar. 29, 1939. [239]

[Title of District Court and Cause.]

PETITION FOR ORDER ALLOWING
APPEAL.

To the above entitled Court and the Honorable Judges thereof:

Whereas, West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking association; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell [240] Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg, Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J.

C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, respondents and objecting creditors in the above entitled proceeding consider themselves aggrieved by the order and interlocutory decree of the above entitled Court rendered in the above entitled proceeding which decree is entitled "Interlocutory Decree" and is dated the 21st day of February, 1939, and is signed by the Honorable Paul J. Mc-

Cornick, for the reasons and because of the errors set out in the Assignment of Errors presented and filed with this petition.

Now Therefore, the said respondents and objecting creditors do hereby appeal from the aforesaid order and decree to the United States Circuit Court of Appeals for the Ninth Circuit upon all of the grounds and for the reasons specified in the assignment of errors filed herewith and pray that said appeal may be allowed [241] and that a citation in due form shall be issued herein directed to the petitioner, Merced Irrigation District in the above entitled proceeding commanding it to appear before the said Circuit Court of Appeals to do what may be adjudged to be done in the premises, and that a transcript of the record, proceedings, and papers upon which order and decree was made shall be duly made and authenticated and sent to the aforesaid Circuit Court of Appeals, and that such other and further order may be made as may be proper.

Dated:

CHAS. L. CHILDERS,

Attorney for West Coast Life Insurance Company.

HUGH McKEVITT,

Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE,

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and
Belle Crowell.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as
Executrix, and Richard tum Suden
as Executor, of the Last Will of
William A. Lieber, Alias, De-
ceased.

BROBECK, PHLEGER & HARRI-
SON,

By EVAN HAYNES,

Attorneys for Florence Moore;
American Trust Company as
trustee [242] under a certain
agreement between R. S. Moore
and American Trust Company
dated December 15, 1927; Crocker
First National Bank, as trustee
under a certain agreement between
Florence Moore and Crocker First
Federal Trust Company, dated
December 15, 1937.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth Jr. George N. Keyston George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen N. Chapman; Edith O. Evans; J. Ofelth; Dante

Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie, R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; C. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell,
Attorneys for Appellants.

[Endorsed]: Petition for Order Allowing Appeal.
Filed Mar. 30, 1939. [243]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

In the above entitled case (mentioned in the petition to which this order is attached), it is ordered that the appeal therein prayed for be and the same is hereby allowed, and the Court hereby fixes the amount of the cost bond to be given by the appellants, the respondents named in said petition, in the sum of \$250.00, and it is further ordered that the costs bond in said amount heretofore filed by respondents shall be deemed compliance with this order.

Dated: March 30th, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Order Allowing Appeal. Filed Mar. 30, 1939. [244]

[Title of District Court and Cause.]

ORDER FIXING BOND.

It appearing that West Coast Life Insurance Company, a corporation, et al., appellants, have filed herein their Notice of Appeal to the Circuit Court of Appeals for the Ninth Circuit (Under Rule 73), and good cause appearing therefor.

It Is Ordered that the bond of said appellants on appeal herein be fixed at \$250.00.

Dated: March 29, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Order Fixing Bond. Filed Mar. 29, 1939. [245]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS.

The appellants West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking association; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, Deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B.

Cates; Nancy Bagg Eastman; Charles [246] C. Bagg; Horace B. Gates; Barker T. Gates; Mary Edna Gates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; C. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell in connection with their petition for an order allowing an appeal, make

the following assignment of errors, which they aver occurred at the trial and determination of this proceeding and in the rendering of the decree appealed from:

1. Chapter IX of the Bankruptcy Act of the United States is unconstitutional and void and affects the property interests of the appellants in that it violates Article I, Section 10, Clause 1, of the Constitution of the United States and the Fifth, Tenth and Fourteenth amendments to the Constitution of the United States.

2. The State of California has not consented and cannot consent to these proceedings. [247]

3. The trial court had no jurisdiction of the cause nor of the parties.

4. The cause is *res judicata*.

5. The proceedings herein were and are barred by proceedings pending in the Superior Court of the State of California under the provisions of Statutes of California 1937, Chapter 24.

6. The State of California has otherwise provided for the control and exercise of the political and governmental powers of Merced Irrigation District through the enactment of the California Irrigation Districts Act, the District Securities Commission Act, and Statute of California, 1937, Chapter 24.

7. The Interlocutory Decree in this cause interferes with the political and governmental powers of

the Merced Irrigation District and the property and revenues thereof necessarily essential for governmental purposes.

8. By the provisions of Section 83 of the Bankruptcy Act the court is without power to apply its order to this irrigation district.

9. The plan of composition herein is unfair, inequitable, and unjust and is not for the best interests of the creditors and it discriminates unfairly in favor of the Reconstruction Finance Corporation.

10. The plan does not comply with the provisions of Chapter IX of the Bankruptcy Act of the United States.

11. The plan of composition has not been accepted and approved as required by the provisions of Subdivision (d) of Section 83 of the Bankruptcy Act.

12. The offer of the plan and its acceptance are not in good faith. [248]

13. The Merced Irrigation District is not authorized by law to take all action necessary to be taken to carry out the plan of composition.

14. The Merced Irrigation District, at the time of the filing of its petition was not and is not insolvent, nor unable to pay its debts as they mature.

15. 51% of the amount of securities effected by the plan, excluding any such securities owned, held, or controlled by the petitioner, had not accepted the plan of composition herein in writing or otherwise

at the time of the filing of the petition herein, nor since.

16. The court erred in making and entering its Findings of Fact and Conclusions of Law herein, and in entering the Interlocutory Decree.

17. The evidence adduced at the hearing was insufficient to sustain the petition.

18. The State of California could not, by its consent to the proceedings, bind non-residents of the State of California.

19. The court erred in classifying the creditors, including the Reconstruction Finance Corporation, as one class.

20. The court erred in finding and holding that the Reconstruction Finance Corporation is a creditor effected by the plan.

21. The court erred in finding and holding that the Reconstruction Finance Corporation is the owner or holder of the original bond issues of the Merced Irrigation District entitled to vote on the plan of composition herein.

22. The court erred in entering a decree herein taking vested rights of the appellants.

23. The court erred in taking jurisdiction of the public [249] trust imposed upon the Merced Irrigation District under the California Irrigation District Act and in administering the same and in depriving the appellants of their rights as beneficiaries of such trusts.

24. The court erred in finding and holding that two-thirds of the aggregate amount of claims of all classes, affected by the plan of composition herein, and which have been admitted by the petitioner, or allowed by the Judge, but excluding claims owned, held, or controlled by the petitioner, have accepted the plan of composition in writing.

25. The court erred in approving and confirming the plan of composition mentioned in the interlocutory decree.

26. The court erred in overruling objections of appellants to the jurisdiction of the court and to the introduction of evidence under the petition.

27. The court erred in finding that none of the matters alleged in the present petition is *res judicata*, and in finding that this court had power and jurisdiction to consider and adjudicate all of the matters in this proceeding.

28. The court erred in approving and allowing the claim of Reconstruction Finance Corporation.

29. The court erred in finding that said plan of composition does not discriminate unfairly in favor of Reconstruction Finance Corporation.

30. The court erred in finding that said plan was not prepared or substantially completed or executed several years before the commencement of this proceeding, and in finding that said plan is a plan of composition pursuant to said Chapter IX.

31. The court erred in holding that all of the

bonds and indebtedness included in the plan of composition are of one and the [250] same class, and are payable without preference.

32. The court erred in holding that every bondholder should deposit any and all bonds and coupons issued or assumed by petitioner, with the disbursing agent within thirty days after publication of certain notice, or be forever barred from claiming or asserting, as against petitioner or any individually owned property located within petitioner or the owners thereof, any claim or lien arising out of said bonds or coupons.

33. The court erred in enjoining and restraining appellants from commencing or prosecuting any suits, actions, or proceedings as to any indebtedness included in the plan of composition.

34. The court erred in holding that petitioner is unable to meet its obligations as they mature, and in holding that adverse agricultural conditions have affected petitioner, and in holding that petitioner has in good faith levied taxes to pay its bonded indebtedness, and that said taxes were greater than the ability of the land to produce or of farmers to pay, and in holding that petitioner was, or is or will continue to be unable to collect sufficient revenue to meet its obligations or a greater amount of revenue than will carry out the plan of composition.

35. The court erred in finding and ruling that said district is unable to meet its debts as they

mature within the true meaning of said terms. The district is practically without leviable property and inability to meet debts has reference to property and not yield from the unlimited and sovereign power of the state or of one of its districts to tax private property.

36. The court erred in finding said plan of composition fair in that it contains no provision for subsequent compensation for the impairing of obligations of the bondholders involved in this case in the event the district is subsequently able to pay its in- [251] debtedness in full through taxation or otherwise.

37. The court erred in finding said plan of composition fair in that it allows said debtor district to retain its water rights, reservoirs, power production facilities, lands, canals, and water systems and other property, which properties were produced by moneys furnished by the bondholders of the district and the plan of composition was in no manner based upon any valuation of said properties.

38. The court erred in finding said plan fair in that it compels no surrender of any property of said district and it wholly fails to measure the new obligations of said district to pay by any valuation of any assets or property of said district.

39. The court erred in not holding that under the terms of California Statutes of 1937, Chapter 24, Section 19, said Reconstruction Finance Cor-

poration and petitioner were bound by said plan of composition prior to the commencement of this proceeding and thereby said corporation is not affected by the plan referred to in this proceeding.

40. The court erred in holding that petitioner and its obligations are subject and amenable to the bankruptcy power of the Congress of the United States, and in holding that the State of California has consented and can consent to this proceeding, and in not holding that any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Extra Session) Chapter 4 is unconstitutional and void in that said Chapter violates the provisions of Article I, Section 16; Article IV, Section 1; Article X, Section 5; and Article XIII, Section 6 of the Constitution of the State of California, and Article I, Section 10, Clause 1 of the Constitution of the United States, and other constitutional provisions. [252]

41. The court erred in not holding that said Chapter IX (formerly Chapter X) of the Bankruptcy Act was and is unconstitutional and that it did not violate the following sections and clauses of the Constitution of the United States: Article I, Section 10, Clause 1, and the Fifth and Tenth Amendments.

42. The court erred in not holding the plan unconstitutional because it interferes with sovereign governmental and political powers of the State of

California, and in particular interferes with the power of taxation.

43. The court erred in not holding that said Chapter IX is not a bankruptcy act which Congress could make applicable to Merced Irrigation District.

44. The court erred in not holding that Merced Irrigation District is a political subdivision created for the purpose of exercising and exercising powers of sovereignty conferred upon said district by the laws of the State of California to carry out public governmental purposes, and it erred in holding that the confirmation of said plan of debt readjustment was not a void and illegal interference with the exercise of said sovereign powers so conferred upon said district.

45. The court erred in not holding that the power of Merced Irrigation District to levy taxes on the lands or property of private individuals is not property within the meaning of a true bankruptcy law.

46. The court erred in approving and confirming the plan of composition without provisions for appellants' vested rights in trust funds and properties, including proceeds of assessments, tax certificates, land to which title has been taken under tax sales and proceeds thereof, the right to levying of annual assessments both in the past and future, and moneys impounded by writ or writs of manda-

mus heretofore issued and the district's power revenues. [253]

47. The court erred in approving the said plan in that appellants' right of assessments against the personal property of landowners was not taken into consideration nor provided for.

48. The court erred in not holding that the plan of composition violates the Fifth amendment of the Constitution of the United States in that mortgages and other obligations, junior to those held by appellants, of petitioner, and petitioner's landowners may be paid in full while appellants are to receive only a portion of the principal of their holdings.

49. The plan further violates the Fifth amendment of the Constitution of the United States by taking appellants' property and giving it to the landowners of petitioner's district.

50. The plan takes the private property of appellants to pay the public debt of the State of California, and of the Merced Irrigation District without just compensation.

51. The court erred in determining that by these proceedings the obligation of the State of California upon the securities affected by the plan could be voided.

52. The court erred in making its conclusions of law as to all the matters mentioned in the within assignment of errors.

53. The court erred in finding and holding that the Reconstruction Finance Corporation is a bond-

holder in the principal amount of \$14,702.00, and accumulated interest on such outstanding bonds or upon any other amount of bonds.

54. The court erred in holding that sub-paragraph (j) of Section 83 of the Bankruptcy Act of the United States in any way applies to the consent of the Reconstruction Finance Corporation or to these proceedings.

55. The court erred in holding that the Reconstruction Finance Corporation had the power under Section 403, Title 43 of U.S.C. to purchase or acquire the original bonds of the Merced [254] Irrigation District.

56. The court erred in holding that it was a governmental purpose of Congress in enacting Chapter IX of the Bankruptcy Act to in any way affect the intention or purpose of the Reconstruction Finance Corporation in making a loan under the provisions of Section 36 of the Federal Farm Mortgage Act.

57. The court erred in finding and holding that equity requires that in any composition under the Bankruptcy Act, that all the bondholders should be considered as of equality and dealt with on a parity.

58. The court erred in finding and holding that the fact that ninety per cent of the original bondholders accepted the plan of composition many months prior to the enactment of Chapter IX is irrefutable evidence or any substantial evidence of the fairness of the plan, or in holding that the

acceptance by the Reconstruction Finance Corporation of the plan is any evidence of the fairness thereof.

59. The court erred in holding that when a California irrigation district is insolvent, its bonded debt is no longer payable under the provisions of Section 52 of the California Irrigation District Act, but that payment is to be made pro rata upon unmatured as well as matured bonds and obligations and in disregard of the order of presentation for payment to the reasurer of the district.

60. The court erred in holding that the court, as a court of bankruptcy, is powerless to surrender its control of the administration of the estate of the Merced Irrigation District.

61. The court erred in holding that the lien claims and rights of the bondholders holding securities of overlapping taxing agencies are entirely dissimilar to the bonds of the Merced Irriga- [255] tion District affected by these proceedings.

62. The court erred in holding that the bonds and coupons affected by the proceedings are all of one class and not affected by the order in which the matured obligations may have been presented to the treasurer of the district under the provisions of Section 52 of the California Irrigation District Act.

63. The court erred in not especially finding upon all and each and every of the defenses raised by the respondent bondholders.

64. The court erred in finding that it was fair and equitable to provide interest bearing bonds for the liquidation of the claim, if any, of the Reconstruction Finance Corporation, but to require the respondents to accept cash.

65. The court erred in finding and holding that it was fair to pay depositing bondholders interest upon their claims and not to pay similar amounts of interest to the respondents.

66. The court erred in holding and determining that it was fair and equitable to pay interest at 4% to the Reconstruction Finance Corporation during all of the months and years since the plan has been in effect, and not to pay the same amount of interest to the respondent bondholders.

67. The court erred in confirming a plan which discriminated in favor of the Reconstruction Finance Corporation and the depositing bondholders and against the respondents.

68. The court erred in confirming a plan which was based upon misappropriation of trust funds and permitted the conversion and deviation of trust funds from their proper channels to the injury and loss of the respondents.

69. The court erred in not granting the motion of respondents to classify the Reconstruction Finance Corporation's claims separately and as claims not affected by the plan [256]

70. The Court erred in exercising or attempting to exercise jurisdiction in acting upon and in con-

firming the petitioner's plan of composition. The court had no jurisdiction of the subject matter of this proceeding.

71. The Court erred in finding against the plea of *res judicata*.

• 72. The Court erred in failing to find that petitioner was barred from prosecuting this proceeding or from obtaining the relief sought by the petitioner herein.

73. The Court erred in failing to find that the plan of composition set out in the petition in this case was substantially the same as the plan set out in the petition of the petitioner herein in that certain other proceeding which is referred to in Finding VII.

74. The Court erred in failing to find that the parties to this proceeding and the parties to said other proceeding were the same.

75. The Court erred in failing to find that the non-assenting bondholders, the objectors in this particular case to the enforcement of the plan of debt composition, were the same creditors whose debts were sought to be readjusted by the petition in said other proceeding.

76. The Court erred in failing to find that in said other proceeding the final decree of the trial court undertook to and did, in form, readjust the obligations of the petitioner represented by the bonds held by the dissenting bondholders appearing

in this case in substantially the same way in which the petition in this case sought to have the said obligations readjusted.

77. The Court erred in failing to find that the non-assenting bondholders who appeared in this case in opposition to this proceeding pleaded and presented to the Court in said other proceeding the same claims and demands which they pleaded and presented [257] to the Court in this proceeding, to-wit, the claims and demands based upon bonds of the petitioner held respectively by the same non-assenting bondholders in both proceedings.

78. The Court erred in failing to find that the issues in both proceedings were in substance the same and that the Court in said prior proceeding undertook to and did find the same facts which the petition in this case sought to have the Court find.

79. The Court erred in failing to find that the pleadings of the non-assenting bondholders, who were identical in both proceedings, did in said prior proceeding particularly challenge the jurisdiction of the trial court to proceed therein.

80. The Court erred in failing to find that the non-assenting bondholders in this particular proceeding did each and all object in said other proceeding and on the trial thereof to the jurisdiction of the trial court over the subject matter of the proceeding or over the non-assenting bondholders, which said non-assenting bondholders included all

of the non-assenting bondholders and claimants in this case whose bonds are being impaired.

81. The Court erred in failing to find that all objections to jurisdiction upon the ground that said Section 80 is unconstitutional were overruled by the trial court in said prior proceeding and that exceptions were duly reserved by and on behalf of all of said non-assenting bondholders.

82. The Court erred in failing to find that those powers which were conferred upon the trial court by what is known as Section 83 of the Federal Bankruptcy Act are the same as the powers which Congress undertook to confer upon the said Court under Section 80 of said Act and that the appeal taken in said other proceeding by the non-assenting bondholders was in part upon the ground that the granting of the powers referred to was in excess of the power of Congress and could confer no jurisdiction upon the said trial court. [258]

83. The Court erred in failing to find that the decree dated April 12, 1937, which is referred to in the aforesaid finding, was based directly upon and did determine that the grant of powers to readjust the indebtedness referred to, which powers the said trial court undertook to exercise, was in excess of the power of Congress and that this had been determined in the case of *Ashton et al. v. Cameron County Water Improvement District No. 1*, 298, U. S. 513.

84. The Court erred in failing to find that it was, by virtue of the said decree of the said United States Circuit Court of Appeals, finally and forever determined as between the petitioner herein and each and all of the dissenting bondholders, appellants herein, that the grant of powers contained in Section 83 of the Federal Bankruptcy Act, under which section this proceeding was begun and prosecuted, was unconstitutional and beyond the power of Congress to make, and that the trial court could not in reliance upon an identical grant of powers undertake to do substantially the same thing in the matter of readjusting the indebtedness represented by the bonds held by the dissenting bondholders as was attempted to be done in said prior proceeding.

85. The Court erred in failing to find that the decree entered by the trial court on the going down of the mandate following the making of said decree by said United States Circuit Court of Appeals was not a final adjudication and bar in favor of the dissenting bondholders to the same extent and in the same manner in which the said decree of the said United States Circuit Court of Appeals constituted an adjudication and bar against the petitioner.

86. The Court erred in failing to find that the decree last named became non-appealable and final because it was entered pursuant to the mandate of said United States Circuit Court of Appeals.

87. The Court erred in failing to find that the decree of said United States Circuit Court of Appeals was final. [259]

88. The Court erred in failing to find that the decree entered upon said mandate was final.

89. The Court erred in failing to find that the petitioner herein was estopped, by virtue of the proceedings referred to in the preceding assignment and by virtue of the proceedings which are referred to in Finding VII of the Court, from asserting that the trial court did in this proceeding have the power to make any of the findings which subdivision (e) of Section 83 of the Federal Bankruptcy Act required it to find as a condition of its confirming or approving the petitioner's plan of debt readjustment.

90. The Court erred in failing to find that the particular issue as to the validity of the powers referred to in said subdivision (e) and the right of the trial court to exercise said powers were involved and were necessarily involved in the trial of said prior proceeding, and said issue was determined in favor of the dissenting bondholders in this case.

91. The Court erred in failing to find that the issues and the parties in the two proceedings were the same and that the subject matter or res in the two proceedings was the same and that the Court could not have been required to dismiss said other proceedings by the judgment of the Circuit Court of

Appeal without a determination that there was no right in the petitioner district to have the debts involved in this case readjusted under alleged bankruptcy power of the kind attempted to be exercised in this case or under any type of bankruptcy power.

92. The Court erred in failing to find that the attempted exercise of power involved in this proceeding was the same as that involved in the prior proceeding and that it had been finally adjudicated in favor of the dissenting bondholders that the obligations represented by their bonds could not be impaired or changed by the exercise of any so-called Federal Bankruptcy power or by the exercise of the particular powers mentioned in Section 83 of the Federal [260] Bankruptcy Act.

93. The Court erred in failing to find that petitioner district was not bankrupt.

94. The Court erred in failing to find that the bonds held by the Reconstruction Finance Corporation were owned by the district and not by said corporation.

95. The Court erred in failing to find that said bonds were paid for in part by cash provided by the district.

96. The Court erred in failing to find that said corporation knew that the district, a California public agency, provided a part of the money which constituted a consideration for the bonds held by said corporation.

97. The Court erred in failing to find that said district had no authority to make a contract which would vest title to any of its bonds in said corporation.

98. The Court erred in failing to find that the district's plan of debt readjustment was discriminatory and unfair in that—

(a) The plan contains no provision for paying any interest as compensation for delay in the period between the actual adoption of the present plan and the times of payment to the bondholders of the district who accepted the district's plan.

(b) The district has been continuously paying interest to said Reconstruction Finance Corporation on the loan made by said corporation to the district and at the rate of 4% per annum and said loan obligation is not materially different from the obligations represented by the district's bonds. Said payments have been made for over two years and no corresponding payment has been made upon the bonds of any of the dissenting bondholders, and the said district has been and is preferring said corporation.

(c) The district paid its warrant indebtedness and its other liquidated indebtedness in full. Said indebtedness [261] existed when the district adopted its plan. It was of the same character as bonded indebtedness.

(d) The said plan does not take into consideration the obligations of overlapping governmental

subdivisions, which obligations consist of bonded indebtedness and other liquidated demands, all payable through taxation in substantially the same way and from substantially the same source as the irrigation district bonds are paid. The plan does not propose in any way to alter such other obligations, and by virtue of casting the whole sacrifice upon the district's bondholders, said other obligations have been brought back to par although they were as badly in default as were the district's bonds.

(e) The lands within the district have been and are in a large part subject to mortgages and deeds of trust securing private loans. The plan contains no provision for calling upon these private money lenders for any sacrifice whatever.

(f) The district misappropriated thousands of dollars by taking the same from its bond funds and using the same for private purposes. This was done after the district became in default. These funds were payable under the law upon the bonds held by the dissenting bondholders, principally on account of interest. The plan does not call for the restoration of this misappropriated money.

(g) The plan seeks to enforce a settlement upon a basis that was not inflicted upon those who accepted the plan. Those who accepted the plan were paid approximately 50-cents on the dollar of the principal of their demands together also with interest on said amount at 4% per annum. The period

of payment was from the time of acceptance of the plan by a bondholder to the time of the payment of the agreed amount on account of principal. These payments were all made before the re-adoption of the plan, about two years ago. The appellants are paid nothing for delay.

(h) The district misappropriated approximately \$400,000.00 from the bond fund, which money belonged to the dissenting [262] bondholders, and it used this money in the acquisition of the bonds claimed to be held by the Reconstruction Finance Corporation, and said corporation knew of the said misappropriation and use of funds. The plan accords the appellants no interest in said bonds.

99. The Court erred in holding that the district's plan had been accepted in writing by the holders of as much as two-thirds in amount of the district's bonded indebtedness or of as much as two-thirds in principal amount of each class of indebtedness affected by the district's plan.

100. The Court erred in holding that the Reconstruction Finance Corporation was a creditor qualified to give a consent which would authorize the Court to proceed to enforce the district's plan as against the dissenting bondholders who are the appellants in this proceeding.

101. The Court erred in holding that the so-called Enabling Act adopted by the legislature of the State of California on September 20, 1934, con-

stituted a sufficient consent on the part of the State of California to this particular proceeding on behalf of one of its governmental agencies.

102. The Court erred in holding that the petitioner was authorized to institute this proceeding.

103. The Court erred in holding that the petition herein stated facts sufficient to constitute a cause for any relief.

104. The Court erred in holding that the district had ever been authorized by its board of directors to prosecute this proceeding.

105. The Court erred in holding that the district's plan for borrowing money with which to pay its bonds had been voted upon and adopted at an election held within said district. It distinctly appeared that the loan contract, which the district claims will constitute a basis or means whereby it will provide funds to complete its plan, was never authorized as provided in either Section 11 or [263] Section 3 of the act adopted by the legislature of the State of California on May 5, 1917 (Cal. Stats. 1917, p. 243) or the amendments to said act adopted in 1933 (Cal. Stats. 1933, p. 2394) or in 1935 (Cal. Stats. 1935, p. 1741.)

106. The Court erred in failing to find that the district was not authorized to borrow any funds with which to complete its plan.

107. The Court erred in failing to find that the district's plan impairs the obligations of the district's contracts as represented by the bonds and

coupons held by the dissenting bondholders, all in violation of Section 16, Art. I of the State Constitution and Subdivision 1, Section 10, Art. I of the Federal Constitution, the references being to the contract clauses of said constitutions.

108. The Court erred in holding that said Section 83 of the Federal Bankruptcy Act was not violative of the 5th Amendment to the Federal Constitution in that it provides for the taking of the bonds of the dissenting bondholders without due process of law and without compensation.

109. The Court erred in holding that the proceeding devised by the State Enabling Act and Section 83 was a judicial proceeding.

110. The Court erred in holding that the District in this case gave the consent to the court's decree which was necessary to make said decree a finality for the purpose of appeal.

111. The Court erred in failing to find that Merced Irrigation District paid, and was able to pay, all of the matured bonds and all interest on its original bond issue, so long as the said Merced Irrigation District levied taxes for the payment thereof, and that no default occurred until the said petitioner, Merced Irrigation District, refused to levy taxes for the payment of such matured bond principal and interest in the fiscal year 1932-1933.

112. The Court erred in failing to find that the Merced Irrigation District unlawfully and in bad faith diverted \$717,932.50 from its bond fund to its

general operating fund, and never returned [264] such money to its bond fund, and at the time or trial herein declined so to do.

113. The Court erred in failing to find that the petitioner has, since 1932, placed every obstacle possible in the way of collection of moneys due to the bondholders, including:

(a) Its refusal to levy taxes for the payment of matured bonds and coupons, taking advantage of the "District Securities Act" which it sponsored;

(b) Its diversion of over \$700,000.00 from the bond fund to the operating fund of said district;

(c) The use of over \$400,000.00 of district funds in efforts to force the bondholders to accept large reductions on the amounts owed them;

(d) The institution of proceedings in the United States District Court, under Section 80 of the Bankruptcy Act;

(e) Instituting proceedings under the so-called Downey Act, sponsored by petitioner, in which the creditors of said district were enjoined, and in the continuation of said proceedings to date;

(f) The institution of the proceedings herein, in bad faith, for the sole purpose of profiting at the expense of the creditors of the district;

(g) In the proceedings herein and prior hereto, in misrepresenting the financial condition of the said district, and in presenting a false balance sheet as the basis for the proceedings, in that it over-

stated the liabilities of the district by \$1,509,000.00, and understated the assets by at least \$340,000.00.

114. The Court erred in not finding that, as applied to the petition herein, Section 83 of the Bankruptcy Act is unconstitutional.

115. The Court erred in refusing to adopt the additional findings proposed by the respondents.

116. The Court erred in refusing to grant a motion for a new trial. [265]

Wherefore, appellants pray that the decree of the district court appealed from shall be reversed.

Dated: March 28, 1939.

CHAS. L. CHILDERS,

Attorney for West Coast Life Insurance Company.

HUGH McKEVITT,

Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE,

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and Belle Crowell.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as
Executrix, and Richard tum Suden
as Executor of the Last Will of
William A. Lieber, Alias, De-
ceased.

BROBECK, PHLEGER & HARRI-
SON,

By EVAN HAYNES,

Attorneys for Florence Moore, et
al.

W. COBURN COOK,

Attorney for Milo W. Bekins and
Reed J. Bekins as trustees ap-
pointed by the Will of Martin Be-
kins, deceased; et al.

Attorneys for Appellants.

[Endorsed]: Assignment of Errors. Filed Mar.
30, 1939. [266]

[EMBLEM]

American Surety Company of New York
Capital \$5,000,000.

BOND FOR COSTS ON APPEAL.

Know All Men By These Presents: That we,
West Coast Life Insurance Company, a corpora-
tion, et al., Appellants named in the Notice of
Appeal to the Circuit Court of Appeals for the

Ninth Circuit (Under Rule 73), dated March 28th, 1939, as Principals, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, and authorized to transact business in the State of California, as Surety, are held and firmly bound unto Merced Irrigation District, and to the United States of America, and to the Clerk of said Court, in the full and just sum of Two Hundred Fifty & 00/100 Dollars (\$250.00), to be paid to them and/or to each and/or to all or any of them and his or their respective successors, if any, as their respective rights may appear, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of March, 1939.

Whereas, the above-named Principals have or are about to file a Notice of Appeal, and to take an appeal in said matter from the Interlocutory Decree, entered in this action on February 21, 1939, the same being the Interlocutory Decree entered after the hearing upon the plan of composition, and from the whole thereof to the Circuit Court of Appeals for the Ninth Circuit and file herewith their said Notice of Appeal.

Now, Therefore, the condition of the above obligation is such, that if the said Principals shall prosecute their said appeal to effect and answer all

costs, if they shall fail to make their plea good, then this obligation to be void; otherwise to remain in full force and effect. [267]

It is further stipulated as a part of the foregoing bond, that in case of the breach of any condition thereof, the above named District Court may, upon notice to the Surety, above-named, proceed summarily in said action or suit to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execution therefor.

GEO. F. COVELL,
GILBERT MOODY,

Appellants on their own behalf
and on behalf of West Coast Life
Insurance Company, a corporation,
et al., Appellants named in Notice
of Appeal to the Circuit Court of
Appeals for the Ninth Circuit
(Under Rule 73), dated March
28, 1939, as Principals.

AMERICAN SURETY COMPANY
OF NEW YORK,

By L. T. PLATT,
Resident Vice President.

Attest:

B. DUCRAY,
Resident Asst. Secretary.

Bond #413538-K

Premium \$10.00 per annum. [269]

State of California

City and County of San Francisco—ss.

On this 17th day of March in the year one thousand nine hundred and thirty-nine before me Thomas A. Dougherty a Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared L. T. Platt and B. Ducray known to me to be the Resident Vice-President and Resident Assistant Secretary respectively of the American Surety Company of New York the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

[Seal] THOMAS A. DOUGHERTY,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires August 4, 1939.

[Endorsed]: Filed Mar. 29, 1939. [268]

[Title of District Court and Cause.]

PRAECIPE.

To the Clerk of the Above Entitled Court:

Please prepare in the above entitled cause a transcript of the record to be transmitted to the United States Circuit Court of Appeals of the Ninth Circuit in pursuance of the appeal taken in said cause by the various appellants referred to in the petition for an order allowing appeal on file herein, the said petition being the sole petition for an order allowing an appeal which has been filed in this case; and please include in said record the following:

1. The original petition of the above named debtor.

2. Each and all of the answers, objections, motions, and pleadings of the dissenting bondholders, who are appellants in the above entitled cause. (Before the time for preparing the record has expired, some portion of the pleadings referred to may be eliminated from the record by stipulation.)

3. All orders made upon motions made in the above entitled cause and all exceptions to any and all such orders. [270]

4. All stipulations made and filed in the above cause by the parties thereto.

5. The Findings made by the court in said cause.

6. The interlocutory order or judgment made in said cause confirming the petitioner's plan.

7. All exceptions to said order.

8. Petition for and order allowing appeal.
9. Assignment of errors.
10. Clerk's certificate of record.
11. Conclusions of the court.
12. Praeceptum for transcript.
13. Stipulation as to transcript and omissions from same if stipulation be obtained and filed.
14. Citation on appeal with proof of service.
15. Bond on appeal.
16. Statement of evidence under Equity Rule 77 to be hereafter prepared and lodged with the Clerk pursuant to Equity Rule 75. (The time for completing this statement will be extended and the statement that may be prepared under new Rule of Civil Procedure 75 may by stipulation of the parties serve as the statement mentioned in this item.)
17. Claims of bondholders.
18. Notice of appeal to the Circuit Court of Appeals under Rule 73A.
19. Designation of contents of record on appeal.
20. Statement of points.
21. Stipulations and orders extending time to docket appeal.
22. Order fixing bond. [271]
23. Notice to Reconstruction Finance Corporation.
24. Order extending time to file objections.
25. Objections to proposed additional findings, proposed findings, notice of entry of judgment, and affidavit of mailing.
26. Notice of entry of judgment.

27. Notice of motion for new trial.

28. Affidavits.

Dated: April 25, 1939.

CHAS L. CHILDERS

HUGH K. McKEVITT

CLARK, NICHOLS & ELTSE

CHASE, BARNES & CHASE

DAVID FREIDENRICH

PETER TUM SUDEN

BROBECK, PHLEGER & HARRISON

W. COBURN COOK

By W. COBURN COOK,

Attorneys for Appellants.

Receipt of a copy of the foregoing Praecept acknowledged this 27th day of April, 1939.

C. RAY ROBINSON,

HUGH K. LANDRAM,

DOWNEY, BRAND & SEYMOUR,

STEPHEN W. DOWNEY,

Attorneys for Merced Irrigation
District, Appellee. [272]

State of California,

County of Stanislaus—ss.

AFFIDAVIT OF SERVICE BY MAIL

Esther Mortensen, being first duly sworn, deposes and says:

That she is a citizen of the United States, resident of the County of Stanislaus, over the age of

eighteen years and not a party to nor interested in the above entitled matter; that on the 25th day of April, 1939, she placed a full, true, and correct copy of the annexed Praeceptum in an envelope, duly sealed and deposited the same in the United States Post Office, at Turlock, California, with the postage thereon fully prepaid, addressed to Reconstruction Finance Corporation, Washington, D. C.; that there is a regular daily communication by mail between Turlock, California, and Washington, D. C.

ESTHER MORTENSEN.

Subscribed and sworn to before me this 25th day of April, 1939.

[Seal] GILBERT MOODY,
Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Praeceptum filed May 2, 1939. [273]

[Title of District Court and Cause.]

PRAECEPTUM

To the Clerk of the above entitled Court:

In addition to the matters called for by the praecipe of appellants herein please incorporate into the transcript of the record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, the following:

1. Order of the above entitled court approving the petition herein as properly filed; also order fixing a time and place for a hearing on the petition

herein, providing that notice be given the creditors, and prescribing the form of such notice; also the notice to creditors signed by the clerk; also all affidavits of publication of notice to creditors, and affidavits of mailing same to creditors; also all minute orders or other orders continuing the hearing of this proceeding from time to time.

2. All evidence or testimony adduced on the trial, including all exhibits and all stipulations entered into during the trial. (After appellants have filed their designation of the portions of the record, proceedings and evidence to be contained in the record on appeal and their statement of the points on which they intend to rely, some portion of the foregoing may be omitted by stipulation). [274]

3. Conclusions and opinion of the Court, dated January 10, 1939.

4. Certified copy of Resolution of Board of Directors of Merced Irrigation District Consenting to the Plan of Composition of Bond Indebtedness; Certified Copy of Resolution of Intention to Adopt Resolution; Affidavit of Publication of Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution; and Affidavit of Posting Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution, filed herein February, 1939.

5. Findings of Fact and Conclusions of Law.

6. Interlocutory Decree, dated February 21, 1939 at 1:05 P. M. and filed February 21, 1939, at 1:54 P. M.

This notice is given in response to the praecipe of appellants and especially reserves the right to urge in the United States Circuit Court of Appeals and in all other courts that the United States Circuit Court of Appeals has not acquired jurisdiction of the appeal herein.

Dated: April 29, 1939.

C. RAY ROBINSON

HUGH K. LANDRAM

DOWNEY, BRAND & SEYMOUR

STEPHEN W. DOWNEY

Attorneys for Merced Irrigation
District, Appellee.

[Served by Mail.]

[Endorsed]: Filed May 1, 1939. [275]

[Title of District Court and Cause.]

STATEMENT OF POINTS

The appellants, West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking association; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and Amer-

ican Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary D. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. [276] Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Mar-

garet B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspergren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, state that the points on which they intend to rely on the appeal in this cause are the following:

1. Chapter IX of the Bankruptcy Act of the United States is unconstitutional and void and affects the property interests of the appellants in that it violates Article I, Section 10, Clause 1, of the Constitution of the United States and the Fifth, Tenth, and Fourteenth amendments to the Constitution of the United States.

2. The State of California has not consented and cannot consent to these proceedings.

3. The trial court had no jurisdiction of the cause nor of the parties.

4. The cause is *res judicata*.

5. The proceedings herein were and are barred by proceedings pending in the Superior Court of the State of California under the provisions of Statutes of California 1937, Chapter 24.

6. The State of California has otherwise provided for the control and exercise of the political and governmental powers of [277] Merced Irrigation District through the enactment of the Califor-

nia Irrigation Districts Act, the District Securities Commission Act, and Statute of California, 1937, Chapter 24.

7. The Interlocutory Decree in this cause interferes with the political and governmental powers of the Merced Irrigation District and the property and revenues thereof necessarily essential for governmental purposes.

8. By the provisions of Section 83 of the Bankruptcy Act the court is without power to apply its order to this irrigation district.

9. The plan of composition herein is unfair, inequitable, and unjust and is not for the best interests of the creditors and it discriminates unfairly in favor of the Reconstruction Finance Corporation.

10. The plan does not comply with the provisions of Chapter IX of the Bankruptcy Act of the United States.

11. The plan of composition has not been accepted and approved as required by the provisions of Subdivision (d) of Section 83 of the Bankruptcy Act.

12. The offer of the plan and its acceptance are not in good faith.

13. The Merced Irrigation District is not authorized by law to take all action necessary to be taken to carry out the plan of composition.

14. The Merced Irrigation District, at the time of the filing of its petition was not and is not insolvent, nor unable to pay its debts as they mature.

15. 51% of the amount of securities affected by the plan, excluding any such securities owned, held, or controlled by the petitioner, had not accepted the plan of composition herein in writing or otherwise, at the time of the filing of the petition herein, nor since. [278]

16. The court erred in making and entering its Findings of Fact and Conclusions of Law herein, and in entering the Interlocutory Decree.

17. The State of California could not, by its consent to the proceedings, bind non-residents of the State of California.

18. The evidence adduced at the hearing was insufficient to sustain the petition.

19. The court erred in classifying the creditors, including the Reconstruction Finance Corporation as one class.

20. The court erred in finding and holding that the Reconstruction Finance Corporation is a creditor affected by the plan.

21. The court erred in finding and holding that the Reconstruction Finance Corporation is the owner or holder of the original bond issues of the Merced Irrigation District entitled to vote on the plan of composition herein.

22. The court erred in entering a decree herein taking vested rights of the appellants.

23. The court erred in taking jurisdiction of the public trust imposed upon the Merced Irrigation District under the California Irrigation District

Act and in administering the same and in depriving the appellants of their rights as beneficiaries of such trust.

24. The court erred in finding and holding that two-thirds of the aggregate amount of claims of all classes, affected by the plan of composition herein, and which have been admitted by the petitioner, or allowed by the Judge, but excluding claims owned, held or controlled by the petitioner, have accepted the plan of composition in writing.

CHAS L. CHILDERS,

Attorney for West Coast Life Insurance Company. [279]

HUGH K. McKEVITT,

Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE,

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and Belle Crowell.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as Executrix, and Richard tum Suden as Executor of the Last Will of William A. Lieber, Alias, Deceased.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

BROBECK, PHLEGER & HARRISON,
SON,

By EVAN HAYWER,

Attorneys for Florence Moore;
American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; Mary B. Cates; John D. Bicknell Bagg; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary

Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller, Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth Jr., George N. Keyston, George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; [280] Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; C. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the Estate of J. N. Gillett, deceased; Theo. F.

Theime; Fletcher F. Flaherty;
Frances V. Wheeler; Miriam H.
Parker; Apphia Vance Morgan;
First National Bank of Pomona;
George F. Covell; Alma H.
Woore; George Habenicht; Seth
R. Talcott; Adolph Aspegren; J.
H. Fine; Mrs. J. H. Fine; F. F. G.
Harper; and W. S. Jewell,
Attorneys for Appellants.

[Endorsed]: Filed May 31, 1939. [281]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL.

The appellants West Coast Life Insurance Company, a corporation, et al., hereby designate as the contents of the record on appeal to the Circuit Court of Appeals for the Ninth Circuit herein, the following portions of the records, exhibits, and evidence to be contained in the record on appeal, to-wit:

1. The original petition of the above named debtor for confirmation of a plan of composition.
2. Stipulation relating to order approving petition and notice of hearing dated May 12, 1939.
3. Answer of Mary E. Morris.

4. Answer of West Coast Life Insurance Company.
5. Answer of Milo W. Bekins, et al.
6. Stipulation relating to answer of Florence Moore, et al.
7. Proof of claim of Reconstruction Finance Corporation.
8. Proof of claim of appellants West Coast Life Insurance Company, Mary E. Morris, R. D. Crowell, and Belle Crowell.
9. Stipulation (relating to inclusion of claims in answers).
10. All orders made upon motions made in the above entitled cause and all exceptions to any and all such orders.
11. Stipulation and order (relating to F. F. G. Harper and W. S. Jewell.)
12. All other stipulations made and filed.
13. Notice to Reconstruction Finance Corporation.
14. Order extending time to file objections.
15. Proposed modification of plan.
16. Conclusions of the court. [282]
17. Findings made by the court.
18. Minute order of January 10, 1939.
19. Objections to proposed findings of fact and conclusions of law.
20. Respondents proposed additional findings to petitioners findings of fact and conclusions of law.

21. Interlocutory decree or judgment made in said cause concerning the petitioner's plan.

22. Notice of entry of judgment or decree.

23. Notice of motion for new trial and order thereon.

24. Motion for new trial.

25. Affidavits in support of motion for new trial by Lucius F. Chase, N. Walter Strange, and John V. Murphey.

26. Affidavits in opposition to motion for new trial by E. Charles Lombard, H. P. Sargent, and E. E. Neel.

27. Petition for and order allowing appeal and fixing bond.

28. Assignment of errors.

29. Bond on appeal.

30. Citation on appeal with proof of service thereof.

31. Notice of appeal to the Circuit Court of Appeals under rule 73(a), with clerk's docket entry showing service thereof.

32. Order fixing bond on appeal.

33. Praecipe for transcript.

34. Appellee's praecipe for transcript.

35. This designation of the contents of record on appeal.

36. Statement of points.

37. Stipulations and orders extending time to docket appeal.

38. Condensed statement in narrative form of the testimony now in course of preparation and stipulation relating thereto.

39. Appendix to condensed statement of evidence with stipulations, if any.

40. Stipulation for transfer of original exhibits and orders thereon. [283]

41. All minute orders.

42. Resolution of Board of Directors of Merced Irrigation District consenting to plan of composition.

43. Proposed findings of fact and conclusions of law.

44. Reporter's transcript of evidence and proceedings and such original exhibits as may be covered by stipulation.

45. Clerk's certificate of record.

CHAS. L. CHILDERS,
HUGH K. McKEVITT,
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER & HARRISON,
W. COBURN COOK,
By W. COBURN COOK,

Attorneys for Appellants.

[Endorsed]: Filed May 31, 1939. [284]

AFFIDAVIT OF SERVICE BY MAILING.

State of California,
County of Stanislaus—ss.

J. Alfred Swenson, being first duly sworn, says: That he is a citizen of the United States, residing in the City of Turlock, California, in the County of Stanislaus, where the mailing hereafter referred to took place; that he is over the age of eighteen years and not a party to the above entitled cause; that on the 27th day of May, 1939, he deposited in the United States Post Office, at Turlock, California, sealed envelopes, with postage thereon fully prepaid, each of which contained a true copy of the Designation of Contents of Record on Appeal and Statement of Points the original of which is hereunto affixed. That one of the said envelopes was addressed to Reconstruction Finance Corporation, Washington, D. C.; and another to Downey, Brand & Seymour, Capital National Bank Bldg., Sacramento, California, and another to Messrs. Hugh K. Landram and C. Ray Robinson, Shaffer Building, Merced, California. That there is a regular communication by mail between the place of mailing and the places so addressed.

J. ALFRED SWENSON.

Subscribed and sworn to before me this 27th day of May, 1939.

[Seal]

GILBERT MOODY,

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Filed May 31, 1939. [285]

[Title of District Court and Cause.]

STIPULATION AND ORDER

In the above cause it is stipulated:

1. That appellants shall have to and including May 10, 1939, to file with the Clerk of the Court their designation of the portions of the record, proceedings and evidence to be contained in the record on appeal, and within which to file their statement of the points on which they intend to rely: but appellee expressly reserves the right to urge in the U. S. Circuit Court of Appeals and in all other courts that the U. S. Circuit Court of Appeals has not acquired jurisdiction of the appeal herein.

2. The time for filing the record on appeal and docketing said cause is extended to and including May 27, 1939.

3. The above entitled Court may make an order extending time in accordance with the foregoing stipulation.

Dated: April 25, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND & SEYMOUR,
STEPHEN W. DOWNEY,

Attorneys for Merced Irrigation
District, Appellee. [286]

CHAS. L. CHILDERS,
HUGH K. McKEVITT,

CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER & HARRISON,
and W. COBURN COOK,
By W. COBURN COOK,
Attorneys for Appellants.

ORDER

In the above cause and pursuant to the above and foregoing stipulation it is ordered that appellants shall have to and including May 10, 1939, within which to file with the Clerk their designation of the portions of the record, proceedings and evidence to be contained in the record on appeal in the above cause and within which to file their statement of the points on which they intend to rely. It is further ordered that the time for filing the record on appeal and docketing said cause is extended to and including May 27, 1939.

Dated: May 2, '39.

PAUL J. McCORMICK,
U. S. District Judge.

[Endorsed]: Filed May 2, 1939. [287]

[Title of District Court and Cause.]

ORDER

Good cause appearing, it is ordered in the above-entitled case in connection with the appeals of West Coast Life Insurance Company, a corporation, et al., to the United States Circuit Court of Appeals for the Ninth Circuit that the time for filing the record and transcript on appeal in said cause and the time for docketing of said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco (as to appellants' appeals under both the old and new methods of appeal) shall be and the same is enlarged and extended to and including May 27, 1939.

Dated: April 25th, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed April 25, 1939. [289]

[Title of District Court and Cause.]

ORDER

Good cause appearing, it is ordered in the above entitled case in connection with the appeals of West Coast Life Insurance Company, a corporation, et al., to the United States Circuit Court of Appeals for the Ninth Circuit that the time for filing the record and transcript on appeal in said cause and

the time for docketing of said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, shall be and the same is enlarged and extended to and including June 27, 1939.

PAUL J. McCORMICK,

Judge, United States District Court

[Endorsed]: Filed May 18, 1939. [291]

[Title of District Court and Cause.]

ORDER

Upon application of the appellants and stipulation between the parties, and good cause therefor appearing, it is ordered that the time within which appellants may file their proposed narrative statement of evidence and docket the appeals in the Circuit Court of Appeals for the Ninth Circuit in the above cause be, and hereby is extended to and including July 26, 1939.

CURTIS D. WILBUR,

Judge, United States Circuit Court.

[Endorsed]: Filed Jun. 22, 1939. [293]

[Title of District Court and Cause.]

STIPULATION

It is stipulated between Appellants and Appellee that whereas Appellants and Appellee have in fact

been diligently and without delay, working upon the record on appeal in this case, in an effort to reduce the very bulky record of the testimony to a shorter and more concise form, and because of the tremendous amount of labor involved, and the number of counsel, it has been impossible to complete the record on appeal prior to the expiration of ninety days from the giving of notice of appeal.

Now, therefore, it is stipulated by and between the parties that the time for filing the Narrative Statement of Evidence in this cause may be extended to and including July 26, 1939, and the time for docketing the appeals in the Circuit Court of Appeals of the Ninth Circuit may be likewise extended to and including July 26, 1939; but appellee expressly reserves the right to urge in the United States Circuit Court of Appeals, and in all other courts, that the United States Circuit Court of Appeals has not [294] acquired jurisdiction of the appeal herein.

Dated: June 15th, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND & SEYMOUR,
STEPHEN W. DOWNEY,

Attorneys for Appellee.

CHAS. L. CHILDERS,
HUGH K. McKEVITT,
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,

DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER & HARRISON,
W. COBURN COOK,
By W. COBURN COOK,
Attorneys for Appellants. [295]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 295, inclusive, contain the original Citation and Affidavit of Service on R. F. C. and full, true and correct copies of the Petition of Debtor for Confirmation of Plan of Composition, with Exhibits A and B; Stipulation Eliminating Exhibits C and D to the Petition, dated May 29, 1939; Stipulation that Petition was properly Filed and Approved and Notices given, dated May 12, 1939; Minutes of Sept. 12, 1938; Answers and Objections of West Coast Life Insurance Co., with Exhibit A; Stipulation Relating to the Answers of Florence Moore, et al; Answer of Mary E. Morris, with Exhibits A and B; Statement of Claim of West Coast Life Insurance Company; Claims of R. D. Crowell; Claim of Belle Crowell; Answer and Objections to the Petition by Milo W. Bekins,

et al., and Proof of Claim; Minutes of Oct. 10, 1938; Minutes of October 13, 1938, Order for Notice to R. F. C.; Notice of Clerk to R. F. C.; Minutes of Oct. 31, 1938; Minutes of Nov. 14, 1938; Minutes of Nov. 15, 1938, Order Quashing Subpoena Duces Tecum; Stipulation that Claims may be Attached to Verified Answers; Minutes of Nov. 21, 1938; Minutes of Nov. 22, 1938; Minutes of Nov. 23, 1938, Order Denying Motion to Dismiss; Minutes of Nov. 25, 1938; Minutes of Nov. 30, 1938; Stipulation and Order relating to F. F. G. Harper and W. S. Jewell; Proposed Modification of Plan; Minutes of Jan. 10, 1939, Order for Decree Confirming Plan; Conclusions and Opinion of the Court; Order Extending Time for Filing Objections and Exceptions to Proposed Findings and Decree; Resolution of Board of Directors of Debtor Consenting to the Plan; Resolution of Intention to Adopt Resolution; Affidavit of Publication of [296] Notice of Intention; Affidavit of Posting Notice of Intention; Objections to Proposed Findings of Fact and Conclusions of Law and Decree; Proposed Additional Findings; Findings of Fact and Conclusions of Law Signed and Filed Feb. 21, 1939; Interlocutory Decree Approving Plan Filed Feb. 21, 1939; Notice of Entry of Judgment; Affidavit of Service of Notice of Entry of Judgment; Notice of Motion for New Trial; Motion for New Trial; Affidavit of Lucius Chase on Motion for New Trial; Affidavit of N. Walter Stange on Motion for New

Trial, including part of Exhibit "X" (for Exhibits attached hereto see Appendix to Statement of Evidence); Affidavit of John V. Murphy on Motion for New Trial; Affidavit of E. Charles Lombard on Motion for New Trial; Affidavit of H. P. Sargent; Affidavit of E. E. Neel; Minutes of March 20, 1939, Hearing Motion for New Trial and Submission; Minutes of March 28, 1939, Order Denying Motion for New Trial; Order Denying Motion for New Trial; Notice of Appeal; Petition for Appeal; Order Allowing Appeal; Order Fixing Bond on Appeal; Assignments of Error; Bond for Costs on Appeal; Praecipe of Appellant; Counter-praecipe for Appellee District; Statement of Points on Appeal; Designation of Record on Appeal by Appellant, which together with Four Stipulations and Orders Extending Time to Docket Appeal, the Statement of Evidence, Appendix, Stipulation and Order attached thereto for transmittal of original Exhibits "00" and 35, the original Exhibits and the Reporter's Transcript of Proceedings transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$52.10, and that said amount has been paid me by the Appellants herein.

Witness my hand and the Seal of the District Court of the United States for the Southern Dis-

trict of California, this 24th day of July, A. D. 1939.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk. [297]

[Title of District Court and Cause.]

CONDENSED STATEMENT IN NARRATIVE
FORM OF THE TESTIMONY

Be it remembered, that this cause came on regularly for hearing in the above entitled Court, before the Hon. Paul J. McCormick, judge presiding, upon the petition for confirmation of a plan of composition of bond indebtedness of Merced Irrigation District, and upon the several answers, objections and petitions in intervention of creditors of Merced Irrigation District, and upon the order of the court to determine whether or not Reconstruction Finance Corporation is a creditor of petitioner affected, except as to the respondent Mary E. Morris who did not join therein, at the court room of the above entitled Court, at Fresno, California, on **November 21, 1938**

At said hearing Messrs. Downey, Brand & Seymour, by Stephen W. Downey, Esq., H. K. Landram, Esq., and C. Ray Robinson, Esq., appeared for Merced Irrigation District, Petitioner;

Robert E. Walker, Esq., for the firm of Brobeck, Phleger & Harrison, appeared for objectors Florence Moore, American Trust Company, as trustee, and Crocker First National Bank, as trustee; [298]

George Clark, Esq., of the firm of Clark, Nichols & Eltse, appeared for the objector, Mary E. Morris;

Chas. L. Childers, Esq., appeared for the objector, West Coast Life Insurance Company;

N. J. Hooey, Esq., representing Hugh K. McKevitt, Esq., appeared for objector, Pacific National Bank of San Francisco;

Peter tum Suden, Esq., appeared for the objectors Minnie E. Rigby, executrix, and Richard tum Suden executor of the last will of William A. Liebar, deceased;

W. Coburn Cook, Esq., appeared for objectors Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fanie M. Dole; James Irvine; J. C. Titus; Sam J. Evan, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper and George B. Miller as Trustees of Cogswell Polytechnical College; Tulo-

cay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Otis M. Judson, Julia Sunderland; Lily Sunderland, Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason, Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as Executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances [299] V. Wheeler; Miriam H. Parker; Nicholas N. Prusch; Apphia Vance Morgan; H. S. Dutton; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper and W. S. Jewell;

David Freidenrich, Esq., for the firm of Freidenrich & Selig and Kirkbride & Wilson appearing for objector Claire S. Strauss;

Lucius F. Chase, Esq., for the firm of Chase, Barnes & Chase, appearing for R. D. Crowell and Belle Crowell.

Some of the parties named as objectors were described as objectors, others as interveners, and others as respondents, all being creditors, namely,

owners of bonds of Merced Irrigation District, involved and materially and adversely affected by the plan of composition proposed by Petitioner, and appearing in opposition to the plan of composition proposed by the Petitioner, Merced Irrigation District, and of these proceedings, and made and respectively filed answers and proofs of claims, in these proceedings.

The following is a condensed statement in narrative form of all of the testimony taken at the aforesaid hearing, to-wit:

The court stated that it desired evidence first on whether the Reconstruction Finance Corporation is a creditor affected by the plan to be followed by evidence on all the other issues. [300]

(The objecting bondholders are referred to as Respondents.)

The exhibits hereinafter referred to were offered and received in evidence.

Petitioner's Exhibit No. 1 is a resolution of Reconstruction Finance Corporation. dated November 14, 1934, and is found at page 155 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 2 is a resolution of the Board of Directors of petitioner dated December 11, 1934, and is found at pages 180 to 183 of Respondents' Exhibit "00".

Respondents objected to petitioner's Exhibit No. 2 on the ground that there is no foundation laid and no authority to make the resolution unless that

authority is later shown by showing the election authorizing the proceeding.

Petitioner's Exhibit No. 3 is a resolution of the Board of Directors of petitioner, dated February 11, 1935, and is found at pages 183 to 192 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 4 is an amendment of Reconstruction Finance Corporation to its resolution of November 14, 1934, and is found at the bottom of page 192 of Respondents' Exhibit "00".

Respondents reserved the right to object to petitioner's Exhibit No. 4 as being a modification of the original resolution and the acceptance of that and the modifying agreement was not approved by the electors at an election in the District.

The objection was overruled tentatively subject to being deemed erroneous later.

Mr. Friedenrich did not join in said objection.

At this point it was stipulated by Counsel and approved by the Court that every adverse ruling of the Court to objections made by any of the respondents or objectors would be deemed excepted to and that any objection, stipulation or admissions made by counsel for any of the respondents or objectors would be deemed to be made on behalf of all of them unless otherwise noted at the time. [301]

Petitioner's Exhibit No. 5 is a resolution of Reconstruction Finance Corporation as a further amendment to the resolution of November 14, 1934, and is found at page 193 of Respondents' Exhibit "00".

Respondents made the same objection to petitioners' Exhibit No. 5 as was made to petitioner's Exhibit No. 4, with the same ruling.

Petitioner's Exhibit No. 6 is a resolution of the Board of Directors of petitioner of July 23, 1935, and is found at pages 194 to 197 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 7 is a resolution of the Board of Directors of petitioner of September 18, 1935 and is found at pages 198 to 201 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 8 is an agreement entitled "Bond Purchase Contract" dated as of September 16, 1935, and is found at pages 202 to 217 of Respondents' Exhibit "00".

Respondents offered the same objection to petitioner's Exhibit No. 8 as was made to petitioner's Exhibits No. 4 and No. 5 with the same ruling.

Petitioner's Exhibit No. 9 is an agreement dated August 14, 1935, and is found at pages 217 to 221 of Respondents' Exhibit "00".

Respondents offered the same objection to Petitioner's Exhibit No. 9 with the same ruling.

D. B. ATKINS,

a witness on behalf of the petitioner, being duly sworn, testified as follows:

My residence is at Fairfax, California, Marin County. I am an employee of the Federal Reserve

(Testimony of D. B. Atkins.)

Bank of San Francisco in charge of disbursement of the funds in connection with Merced Irrigation District transactions and handled the mechanics of the disbursements of the funds for Reconstruction Finance Corporation in connection with Merced Irrigation District bonds and I am [302] entirely familiar with it. The original disbursement was on or about October 4, 1935, and that was the biggest lot of the bonds. There were a little over \$14,000,000 on that first disbursement on October 4, 1935, and there have been subsequent small disbursements. The disbursement amounted to \$14,071,000 and represents securities that were taken in and we paid out funds in payment for those securities.

I have the original letter from Reconstruction Finance Corporation to the Federal Reserve Bank giving instructions in connection with that disbursement. The letter is dated September 19, 1935.

The letter is received in evidence as Petitioner's Exhibit No. 10, to which Respondents objected upon the ground that it purports to be a communication from a principal to an agent who is not a party to the action, immaterial and a self-serving declaration and also an attempt to alter the terms of the contract between R. F. C. and Merced Irrigation District.

The objection was overruled.

(Testimony of D. B. Atkins.)

The principal portion of Petitioner's Exhibit No. 10 is set out in the Appendix (p. 557).

The Witness: At the time the disbursement was made pursuant to the letter which is in evidence, I took completed memorandums of sale and receipts from the various depositaries, and holders of the bonds in the form attached to the letter. These are photostatic copies of the bills and receipts.

Subject to the same objections and the same rulings the photostatic copies of the bills and receipts were introduced in evidence as petitioner's Exhibit No. 11 and are in substantially the form of Memorandum of Sale attached to Exhibit 10. (p. 574).

[303]

The Witness: The bills of sale were given by the depositaries only and not by the committee. The Security First National Bank, The Capital National Bank, Bank of America, Citizens National Bank and Anglo California National Bank were the depositaries for the committee and gave the bills of sale.

It was conceded that the voluntary Bondholders Protective Committee had deposited many of the bonds with the banks as depositaries and that the banks in turn had executed bills of sale for the committee bonds.

The Witness: Our position in this matter as custodian and fiscal agent is that we followed the instructions which are outlined in this letter (Exhibit

(Testimony of D. B. Atkins.)

10) and we obtained documents which are similar to the exhibits attached.

Mr. Cook offered the following statement: That between 50 and 60% of the bondholders, prior to the end of 1933, had deposited their bonds with the voluntary bondholders protective committee, and that that bondholders committee had under their deposit agreement authority to make some disposition, what disposition they might make within their discretion, of those bonds; that subsequently they circularized the bondholders on the question of whether the bondholders would prefer the cash offer plan, i.e. \$515.01 cash for each \$1000 bond, or the refunding plan under which they were to get a \$1000.00 bond with certain reduced interest for 7 years, and that, after receiving a reply by questionnaire that the majority of the bondholders preferred the cash offer plan, the committee then came into court under Section 80, the case we have referred to already today, and filed a consent to the plan that was there proposed; that subsequently, and before that case was disposed of by this court, the Reconstruction Finance Corporation, through the Federal Reserve Bank, obtained or acquired without saying what the legal process was, the physical custody of these bonds through these documents that you have shown here, and that prior to that, [304] however, the bondholders committee

(Testimony of D. B. Atkins.)

executed an agreement of some character to the depositories, who acted as owners agent, and surrendered the bonds to the Federal Reserve Bank; that that is the history of the transaction.

In reply to the foregoing offer Mr. Downey stated: In the main, that is right.

The Witness: After this first "big disbursement" additional bonds were taken over by the Federal Reserve Bank. The additional bonds were taken over the counter. No bills of sale were taken subsequent to the original disbursement. I have a telegram from Mr. Mulligan, treasurer of the Reconstruction Finance Corporation, instructing us to waive supporting documents other than Exhibit "B" in connection with the purchase of bonds. The telegram reads as follows:

"From Mullign, RFC

"Washington, DC

Oct. 26, 1935

"Relet Sept. 19, 1935 concerning Merced Irrigation District instructions as amended further amended to permit purchase from any owner or bearer any district bonds provided they compare as to text and signatures with any bond of the respective issues now held by you as custodian. Supporting documents other than Exhibit B not required. You are authorized to proceed on this basis other terms and conditions remaining unchanged."

(Testimony of D. B. Atkins.)

Exhibit "B" is executed by the Treasurer of the district certifying as to the validity of the securities.

This last purchase covered bonds in the principal amount of \$631,000.00 making a total that has been taken over of \$14,702,000.00. With the exception of \$631,000.00 principal amount we hold bills of sale for all of the bonds. We have in our vault, \$14,702,000.00 par value of securities. \$14,071,000.00 of those securities were taken and bills of sale received; \$631,000.00 worth of these securities were taken and no bills of sale received. \$631,000.00 were over the counter purchases.

Our instructions were further modified by the [305] following telegram:

"From Mulligan R.F.C.

"Washington D. C. Dec. 17/35

"Retel October 26th, concerning Merced Irrigation District, instructions further amend to permit district to pay January 1st, accrued interest by issuing its warrant drawn against the general fund. You will not present matured interest coupons. You are authorized to proceed on this basis other terms and conditions previous authorizations remaining unchanged."

(Testimony of D. B. Atkins.)

And our instructions were further changed by the following telegram:

“From R.F.C. Washington D. C. June 18 1936.

“Re Merced Irrigation District you are hereby authorized to permit J. R. McHenry, district treasurer to register all bonds and coupons maturing on or before July 1, 1936. You may accept McHenry’s facsimile signature. Interest coupons will not therefore accompany your bill to district for interest due July 1, 1936.”

These telegrams were all received and routed to me personally and are original telegrams.

Mr. McHenry was the treasurer of the district and following these instructions the bonds of the Merced Irrigation District and the Federal Reserve Bank were registered in the name of Reconstruction Finance Corporation as owner. They bear the date of registration and read: “This bond is registered pursuant to the statute in such cases made and provided, in the name of Reconstruction Finance Corporation, and the interest and principal thereof are hereafter payable to such owner,” and has a facsimile signature of James R. McHenry, treasurer of Merced Irrigation District.

At the time the bonds were registered in the name of Reconstruction Finance Corporation as owner they were in custody of the Federal Reserve Bank

(Testimony of D. B. Atkins.)

and all bonds held by us were so registered and all bonds that have been taken in since have also been registered in the name of Reconstruction Finance Corporation as owner. The registration we are talking about is a registration of the ownership where, under the statute, the owner of the bond is permitted to register his bond; that is to say, the bond is stamped with the name of the owner. I cannot tell you the exact [306] date of registration but it was during the latter part of June, 1936. And all of the bonds that we held at that time were registered, and the additional bonds that have come in since were registered as they came in. All of these bonds are today at the Federal Reserve Bank in our vault and are held at the order of Reconstruction Finance Corporation. The original letter of instruction requires the disbursement of this money, as I remember it, by September 30, 1935 but that has been extended periodically since that date and I believe it is in effect at the present time. I am not sure of that. Right up to the present time we have been taking these bonds whenever they are offered. I mean by that that this original letter of instruction stipulates that from time to time but not later than September 30, 1935 we will purchase for Reconstruction Finance Corporation account bonds presented on the following terms and conditions.

Now, after this, the date of September 30, 1935,

(Testimony of D. B. Atkins.)

the time was extended by the corporation sometimes a month and sometimes three months at a time but each time they would come and extend our authority to purchase additional bonds. We would purchase the bonds when they were presented. Otherwise, we did nothing but file the authority to purchase bonds when they were presented. They were purchased periodically along during that period. There were some twenty purchases, separate purchases from October 14 to September 22, 1938 was the last purchase. We made purchases in '35, '36 and in 1937 and in 1938.

The respondent stated that it is understood that the use of the term "purchase" is being objected to without the necessity of repeating the objection. To which statement the Court concurred.

The Witness: We paid the amount to any person who presented bonds and said they were the owner of the bonds and after the transaction the bonds would be placed in our vault for safe keeping for the [307] account of Reconstruction Finance Corporation and the money would be delivered to the proper owner in the form of a treasury check. The check drawn on the treasurer of United States. There was never any fluctuation in the value of the bonds. Every bond we have taken has been at the price of \$515.01. The date of the last purchase was September 22, 1938, \$3,000.00. A

(Testimony of D. B. Atkins.)

check was issued for \$1414.73. Apparently some coupons were missing from those bonds and therefore the extension does not equal three times \$515.01.

This is a file copy of telegram to Mulligan, R.F.C., Washington:

"to Mulligan R F C Washington June 19, 1936
Retel June 18 regarding Merced Irrigation District. Representatives of District have called for the purpose of registering all matured and unmatured bonds of Merced Irrigation District held by us. Registering of unmatured bonds involves detachment of coupons and not registering coupons except on matured issues as authorized in your wire referred to above. We are informed by Mr. McHenry, District Treasurer, that there are two classes of registration—one—Registration of unmatured bonds as to ownership, and—two—Registering of matured bonds as to future payment. Matured coupons in latter case will not be detached as they are registered for future payment. Please advise."

"June 20, 1936

"From Mulligan, RFC. Washington, D. C.

"Retel Osmer June 19th, Merced Irrigation District you will permit District treasurer McHenry to register as to ownership and for future payment all District bonds and appurte-

(Testimony of D. B. Atkins.)

nant coupons held by you including removal of such coupons as mature after January 1, '36. McHenry's facsimile signature permissible. Disregard instructions my wire June 18th."

MULLIGAN"

Cross Examination

The Federal Reserve Bank received no fees for our duties as custodian and fiscal agent for the Reconstruction Finance Corporation. They do, however, pay us out-of-pocket expenses and certain of our salaries are charged against them as a reimbursement of expenses. We charge them so much monthly for the duties which we perform for them which is reimbursable. We call that [308] reimbursable expense but we receive no other compensation from any source.

The telegram dated December 17, 1935 amended the last paragraph of the letter of September 19, 1935 directing us to present coupons for payment up to the amount of 4% per annum upon the amount of money disbursed and no coupons have ever been presented but a short time prior to each semi-annual interest date we sent down a notice of interest due.

Respondents' Exhibit "A" consists of three sheets which counsel for the District stipulates is a copy of the draft, voucher and whatever the third

(Testimony of D. B. Atkins.)

page purports to be and is set forth in the appendix. (p. 755)

The Witness: Referring to respondents' Exhibit "A" this is our statement.

Counsel for the Petitioner stipulates that the three sheets constituting respondents' Exhibit "A" is the set of forms that were used on each payment date.

The Witness: I believe the amounts on that voucher which is a part of respondents' Exhibit "A" are the several amounts that were paid out under those loan numbers referred to; that is to say, in connection with the taking in of the bonds. These amounts, for instance, under number 475 in the amount of seven million odd dollars was the amount that was paid or advances made in connection with the loan. We never paid any interest to the bondholders in any circumstances. We paid \$515.01 for the bond providing it had certain coupons attached. No interest was paid through us. Semi-annually we would bill the District for 4% interest on the advances that were made by the Federal Reserve Bank at the instance of RFC. This amounted to 2% semi-annually or 4% per annum. 4% per annum is the interest rate but we sent in the bills semi-annually and it was paid by the [309] District. Our instructions relative to the billing of the District for the interest semi-annually is contained in a letter which was read by Mr. Downey

(Testimony of D. B. Atkins.)

and the additional instructions amending the letter by a telegram which has been read and we have this telegram which I read yesterday dated December 17, 1935 and a part of that reads: "Permit District to pay January first accrued interest by issuing its warrant drawn against the general fund." I believe these are the only instructions which were given with respect to the funds from which this semi-annual interest was to be paid.

It is stipulated by counsel for the District that the form of warrant which was put in evidence was used throughout for each semi-annual payment.

The Witness: Our bookkeeping system is such that an outstanding debt is shown. For every advance which we make for the account of the RFC there is a ledger balance and that—. We do not credit ourselves in connection with these transactions. We draw a check against the treasurer of the United States in disbursing funds of this nature. There is a ledger account showing the indebtedness that RFC was liable to the Federal Reserve bank or the RFC in the amount of these different disbursements. For every advance made by the RFC regardless of for what purpose it is made it is given a number. What we call a custodian loan number and we have a ledger which we do not call a loan register necessarily. It is merely our ledger of accounts showing balances of custodian loans as we call them. Some are advances, some are loans and some are investments. They are all called cus-

(Testimony of D. B. Atkins.)

todian loans. If you look at our ledger you will find where said irrigation district debit, credit and balance. The Merced Irrigation District account is carried on our ledger under three or four different totals; that is, four different custodian loans have been made and in each [310] of them the Merced Irrigation District is charged with the amount of the particular loan and with interest upon that in our ledger and as the several warrants have been paid the interest has been credited. When we collect this money for the RFC the funds are telegraphed daily to the treasurer of the United States for the account of the Reconstruction Finance Corporation. On the same day we make certain reports which are mailed to the Reconstruction Finance Corporation and those reports will identify the funds as being entered. In this particular case we would notify them that we had collected so much interest from Merced Irrigation District on these particular loans identifying each of the loans by number.

It is stipulated by counsel that these bills of sale that purport to be signed by banks are all signed by the various depositaries that were named in the correspondence or in the letters that were addressed to different bondholders and that so far as these banks are concerned they were simply executing bills of sale covering bonds that had been deposited by bondholders.

(Testimony of D. B. Atkins.)

The bills of sale referred to are a part of petitioner's Exhibit No. 11. It is further stipulated that the bondholder's protective committee turned over a large amount of these bonds and in the communication which was read dated February 15, 1935 and which is Petitioner's Exhibit 13, it was suggested that bondholders who had not sent in their bonds could send them in to the depositories and that the bills of sale which are offered in evidence and which purport to be executed by these banks or trust companies are bills of sale which cover the whole of the bonds which were deposited with the committee and in addition a mass of bonds that were sent in by the various bondholders at the suggestion of the committee which is contained in the letter dated February 15, 1935 and that comprehends by far the greater portion of the bonds. It is further admitted by counsel for petitioner that the letter of February 15, 1935 (Exhibit 13) was sent by the bondholders' committee to each [311] and all of the bondholders of the District with the qualification that there were a few or quite a number at that time whose addresses were unknown but it was sent to everyone who held bonds and who could be located including those that had deposited and those that had not deposited.

Petitioner's Exhibit No. 12 is an enclosure referred to in the letter of February 15, 1935 (Exhibit 13) and appears in the Appendix. (p. 583)

(Testimony of D. B. Atkins.)

Petitioner's Exhibit No. 13 is the letter of February 15, 1935 above discussed or testified to and is set forth in the Appendix. (p. 586)

Petitioner's Exhibit No. 13 is the letter and Petitioner's Exhibit No. 12 is the enclosure in the letter which is the form of deposit.

It was conceded that this form of letter is the form that was executed by depositors who had not sent in their bonds to the bondholders committee. The mechanics were these: Where the bonds had already been deposited by the committee and were not withdrawn within the 30 day period then the committee deposited the bonds under the cash plan offer. If the bonds had not been deposited at all then the bondholder signs this letter of deposit wherein he deposited his bonds under the cash offer plan.

Respondents offer in evidence Respondents' Exhibit B which is a letter from the bondholders protective committee to the bondholders dated January 7, 1935, together with a form of questionnaire. The letter and the questionnaire therein enclosed are set forth in the appendix, page 758.

It is stipulated that Respondents' Exhibit "B" was a letter that went out with the questionnaire asking the bondholders what their vote would be on the cash offer plan.

Respondents' Exhibit "C" is a letter by petitioner dated January 10, 1938 and is summarized in the appendix. (p. 761) [312]

(Testimony of D. B. Atkins.)

It is stipulated that there is a statement in the letter with reference to the payment of the expenses of the committee and that it is true that the district did agree to pay those expenses and did pay the expenses; also that if any bondholder desired to withdraw his bond under the original deposit agreement he was required to pay his pro rata of the expense of the committee, the exact amount being set forth in that letter. It was conceded that the District agreed to pay the expenses of the bondholders committee conditioned upon this disbursement being made and after it had been made and not before. In other words, after the bonds had been deposited the District did pay the expenses of the committee even as to those who withdrew their bonds.

It is also admitted by counsel for the petitioner that the recital appearing in the opening sentence of the letter is correct and that the bondholders protective committee was in consultation with the Board of Directors of petitioner as to the form of the letter that should go out and that this was agreeable to both.

The petitioner agreed to meet and did meet not only the expenses mentioned in the letter but also all of the expenses of putting into effect the cash offer plan, payment of all of the printing, payment of all the expenses of soliciting over the entire period that the getting in of the bonds was occur-

(Testimony of D. B. Atkins.)

ring. \$515.01 was net to the bondholder. The aggregate of the expense of the cash offer plan and getting the bonds in under the cash offer plan, and which the district paid, was \$78,076.25, at the time of the first bankruptcy trial and adding additional expenses for the years 1936-1937 and 1938 brings the total for the expenses under the cash offer plan to \$98,888.99. There were also expenses during 1936-1937-1938 under the State Readjustment Act amounting to \$21,417.95.

Petitioner's Exhibit 14 consists of the judgment [313] roll in a certain action brought by petitioner to validate the refunding bonds under the terms of the resolution of November 14, 1934 and is summarized in the Appendix. (p. 597) [314]

Petitioner's Exhibit No. 15 is a resolution of the Board of Directors of Petitioner adopting the plan of composition which is the basis of this action and is set forth in the Appendix. (p. 635)

Petitioner's Exhibit No. 16 is the consent to the plan of composition by Reconstruction Finance Corporation dated June 9, 1938 and is in the Appendix. (p. 644)

Respondents objected to petitioner's Exhibit No. 16 on the ground that it is immaterial, no foundation, and no proof showing that R. F. C. is a creditor effected by the plan.

"The Court: As to the proper foundation, you are not objecting to the fact that they are not calling a witness, are you?"

(Testimony of D. B. Atkins.)

Mr. Childers: No.

The Court: The objection is overruled, subject to the reservation heretofore stated."

At this point is stipulated by all counsel that this proceeding so far as notice is concerned is duly before the Court at the time of trial; that all of the procedural forms up to the time of trial were complied with and that all parties were duly in court at the time of trial so far as notice is concerned except that the respondents reserve the objection to the petition on the ground that it is insufficient.

It was also stipulated that the refunding bonds of petitioner have not been printed, issued or delivered.

E. E. NEEL,

being called as a witness on behalf of petitioner stated:

I reside at Merced and I am the Auditor and the Treasurer of Merced Irrigation District. The refunding bonds which, under the resolution of November 14, 1934, are to go to the RFC have never been printed and obviously they have never been delivered to anybody.

"Mr. Downey: Now your Honor, we feel that the relations [315] between the district and the RFC and the question as to what their ownership or otherwise may be in these bonds is

(Testimony of E. E. Neel.)

determined by the official acts of both agencies, that is to say, the resolutions and the contracts and the bills of sale and so forth. Apparently counsel are going to introduce some evidence which will refer to accounts or something of that kind, as I gathered from the opening statements to that effect. I suppose that is in the nature of something like contemporaneous construction; in other words, that the relationship is not to be determined from the face of these documents which are the official acts but by the conduct of the parties. I am prepared to argue that at the proper time. What I want to establish now is that, if that type of testimony is to go in on this issue, I have a great deal of testimony and correspondence between the district and the RFC, a suit filed by the RFC against the district on these bonds, a resolution of the district acknowledging the bonds, and a vast amount of testimony of that kind, which would, I suppose, be rebuttal testimony if the testimony of the protestants is as I assume it is from their oral arguments, that is, something in the nature of a contemporaneous construction. I don't care about going into it now except that I would like to say to your Honor that, if this other type of testimony is admitted, then I will have to ask leave to put in rebuttal testimony of the same general character or type.

(Testimony of E. E. Neel.)

Mr. Clerk: Well, I don't like the generosity of counsel as to our position. We most emphatically contend, your Honor, that the resolution of November 14, 1934 and its acceptance of December 11, 1934 show the relationship in the nature of lender and creditor. We also contend that a practical construction is consistent with our contention if there be any uncertainty. And we also contend that under the law, if the district was permitted to use its cash in part in the taking up of these bonds, the RFC can not possibly contend that it is the absolute owner of the bonds. [316] If the district spent 5 per cent or 10 per cent, we contend that it is just as effective as against this sort of contention as if it had spent 90 per cent of the total that was being paid in the taking up of these bonds. So we don't admit at all that the documents establish absolute ownership in these bonds in the RFC. We contend the documents establish a debtor-creditor relationship and that practical construction bears out that contention. So our evidence on the practical construction of these documents is not accompanied by any concession that the instruments fairly construed, do not create the debtor-creditor relationship.

Mr. Downey: I have offered to your Honor what I think are all of the official acts which, in my judgment, constitute the contract. I think

(Testimony of E. E. Neel.)

from there on it is a question of whether the evidence that may be offered tends to alter or impair the contract. I don't care particularly whether they go into it or not but the point I am interested in is this, that, if they do go into that type of testimony, then I want to submit considerable additional testimony which is rebuttal and which will show, I think, a consistent conduct between the district and the RFC with respect to what I consider to be the meaning of the contracts themselves, although I recognize ultimately that we will have to debate that matter. I am not asking your Honor to rule on anything but I am merely stating my position in the matter of this time.

The Court: I don't want any of the litigants to misapprehend or misconstrue or misinterpret the court's action at this state of the proceeding either by the court remaining silent or by expressing itself. As I understand the situation between Mr. Downey and Mr. Clark, it is that each contends that the present state of the record shows their situations, respectively, Mr. Downey contending that it shows the relationship of vendor and vendee and Mr. Clark contending that it clearly shows the relation of borrower and lender. But Mr. Clark says that, if the court [317] should take the position that the present state of the record shows the rela-

(Testimony of E. E. Neel.)

tionship of vendor and vendee, that is not so clearly shown as to exclude the introduction of evidence which would indicate a practical construction otherwise of the contracting parties and that, therefore, the evidence which Mr. Chase suggested in the opening statement, and I think also Mr. Cook, is relevant here and is competent to be considered.

Mr. Clark: And that we desire to offer some evidence, your Honor, additionally to what has gone in.

The Court: If that is done, and it consists of documentary evidence additional to corporate fiscal books of entry and merges into correspondence between the entities, then I, of course, will permit the district in rebuttal to offer anything that would be explanatory of that type of evidence. If it is limited to the books, I suppose that the books will reflect the conditions. I am speaking now of the books of fiscal account or any other books of the corporate entities that reflect the corporate action that haven't already been introduced in the case. I haven't the slightest idea of what they have, of course.

Mr. Cook: I might state as preliminary, your Honor, that there is another aspect of that whole thing that has not been alluded to and that is that we are contending also that the

(Testimony of E. E. Neel.)

RFC has consented to and executed a plan previously, apart from these proceedings, which is largely shown by the records that we will introduce as to the two previous proceedings."

The Court: I am not ruling anticipatory of anything. I am just simply giving you the views of the court on the divergent suggestions that have been made by respective counsel, and, if the court has not correctly stated it, I would be glad to have you call my attention to it.

Mr. Downey: I think it is very clearly stated, your Honor. In so far as the issue of whether the RFC is materially [318] interested here is concerned, we close that in chief but, of course, we understand that we are to proceed to other issues, I presume, at a later date.

The Court: That is right. I think the RFC issue to my mind is the paramount issue here at this time."

Mr. Neel, being called as a witness on behalf of respondent stated: [319]

I am the Auditor and Treasurer of Merced Irrigation District. I heard the testimony of Mr. Atkins while he was on the stand to the effect that there were no payments made to the Federal Reserve Bank on account of bonds taken up except the payment of \$515.01 on the principal of the bond. It is a fact, however, that all of those bondholders who

(Testimony of E. E. Neel.)

were paid anything on account of their bonds on or prior to October 4, 1935 did receive something in addition to the sum of \$515.01 on a \$1,000 bond and the additional consideration was paid by Merced Irrigation District pursuant to the old original resolution of November 14, 1934 and the acceptance thereof. The depositing of these bonds with the various depositaries for the purpose of making same available for taking up by the RFC occurred between February 15, 1935 and October 3, 1935. The District was notified from time to time of the depositing and of the amount of the deposit of the bonds with the depositary. We received notice on or about October 3, 1935 that the District would have to pay various sums to the depositaries for the purpose of discharging the agreement to pay to the bondholders 4% interest upon the amount that was to be paid to them by RFC. The sort of a bill that came through to the District was a statement of the accumulated interest at 4% on the various amounts from February 15 to October 3. We received a very voluminous form of the original depositary slips or sheets from the various depositors and from which we checked the interest calculation that they had arrived at to cover that interest period. Each of the depositaries made a complicated computation covering the times of each deposit down to the date that the disbursement was made, representing every bond that was turned in to the depositaries.

(Testimony of E. E. Neel.)

The bills for that came to the District from the Depositories. Then following the receipt of these bills from the depositories the District through its board of directors adopted a resolution for paying all the bills and issued what we call [320] warrants. They were demands upon the Treasurer of the District issued pursuant to the District's resolution and the warrants were transmitted to the various depositories. The list which you hand me showing the dates of warrants, numbers of warrants, names of the depositories and amounts paid by them is correct.

The list referred to is introduced in evidence as Respondents' Exhibit "D" and is set forth in the Appendix. (p. 762).

The Witness: The total amount under Exhibit "D" is \$168,027.31 (the amount is written on Exhibit "D" under direction of the witness). The disbursement was considered a refinancing expense and it was entered in our ledger account for the District in that particular sum as one of the expenses.

We did not at the time of payment of the interest, send any notice to the RFC that the disbursement had been made. I knew that they arranged to let the money go out of the RFC on a day certain on account of the taking up of the bonds which was approximately October 4, 1935 and I also knew that every man who had turned in his bonds had been

(Testimony of E. E. Neel.)

promised this additional 4% under the original November 14, 1934 resolution.

The Federal Reserve Bank gave notice that they were ready to disburse the money and by previous arrangement or agreement we provided this money for disbursement to the bondholders. We did not get notification also from the Federal Reserve Bank in San Francisco as to the date to which the interest would have to be figured. The only notice that came to us was from the depositaries. A copy of the letter authorizing the Federal Reserve Bank to make the disbursement went to Merced Irrigation District and that was received by the district.

In addition to the District's paying this sum of \$168,027.31 the District also agreed in the accepting of the resolution of November 14, 1934 that it would pay all of the ex- [321] penses of effecting the arrangement for the taking up of the bonds at \$515.01. The expense was a heavy expense. It is all shown in this statement.

We have prepared a statement complete to June 30, 1938 of the total amount of interest paid by the district to the RFC on advances of the RFC and this is the correct statement.

The statement is introduced as Respondents' Exhibit "E" and is in the Appendix. (p. 764)

The Witness: The District in addition to making provision for the semi-annual interest payment further set apart in a reserve fund a certain amount annually to meet the requirements of the RFC as

(Testimony of E. E. Neel.)

set forth in the resolution of November 14, 1934 and annually we have placed in a reserve fund beginning with 1936 a certain sum of money. The reserve fund was actually set up in 1936 and \$92,-200.00 placed in the reserve. The amount of \$92,-200.00 arrived at was from the bond schedule that was a necessary accumulation over a period of five years to establish the required reserve called for in the RFC agreement. In other words we began setting up in a special fund account such as that within five years we would have the total reserve fund that was called for in the payment requirement of the proposed 4% bond issue. There have been four deposits made totalling some \$350,000.00 odd dollars. They are made on an annual basis and there have been four of them. I will correct my statement in that the first deposit was made on December 31, 1935. As stated in one of the District securities commission reports as of July 15, 1938 the total amount is \$289,952.90 but there has been an additional sum placed in there since that time and the total aggregate now is \$373,860.64. We have reported to RFC from time to time all payments that have been made into that reserve fund. We have an account in which we credit ourselves with payments on the interest due on the advances made by RFC and the detailed [322] payments that appear on the exhibits that have just gone in evidence are all entered upon the ledger page showing that we are being credited with those

(Testimony of E. E. Neel.)

particular amounts. The billing for those particular sums comes from the Federal Reserve Bank. It is a semi-annual statement showing the amount of interest we owe on the amounts advanced by the RFC.

The cost to date of putting through the cash offer plan has been \$98,888.99. In addition there were expenditures of \$21,417.95, under the State Readjustment Act.

“Mr. Clark: Well, will it be admitted, Mr. Downey, that they were all necessarily incurred?

Mr. Downey: Yes; I will admit that.

Mr. Clark: In putting through the cash offer?

Mr. Downey: I might say they include everything connected with the cash offer plan, the expense of the committee, expense of the depositaries, the expense of the solicitors who got the bond, and printing of bonds—no; they are not printed. I withdraw that—the expense of election, the expense of bond counsel, Messrs. Orrick, Palmer & Dalquist, my fees, incidental telegrams, telephones, and all matter of office expense connected with that plan.

Mr. Clark: All approved by resolutions of the board of directors of the district?

Mr. Downey: Yes.

Mr. Clark: And you will admit they were all necessary?

(Testimony of E. E. Neel.)

Mr. Downey: Yes.

Mr. Clark: Will it be stipulated that the cost embraced within this total sum of the new bond issue averaged approximately a dollar a bond?

Mr. Downey: You mean the expense of bond counsel?

Mr. Clark: Yes.

Mr. Downey: I would say approximately that, probably [323] a little more than that, Mr. Clark.

Mr. Clark: All right."

The Witness: I may state that included in the \$98,888.99 that \$6,000.00 of that is estimated to carry through to the end of this year.

Prior to the application by the district for the loan from the Reconstruction Finance Corporation, the district was working with the Bondholders Committee first on preliminary investigations and second that there was a first refunding plan adopted which has been referred to in detail. \$76,-162.53 represents the preliminary expenses including the preliminary expenses commencing in April 1931 and up to December 1933. And this again includes the expenses of the committee, depositaries, solicitors, etc. for that period. These are no part of the cost for the cash [324] offer plan and do not include any of the expenses in connection with the establishment, enforcement or acceptance of the

(Testimony of E. E. Neel.)

cash offer plan nor the expenses in the litigation to obtain a decree confirming the plan. Neither do they include expenses of the Bondholders Committee etc. under the first plan.

We have a second refunding bond interest fund in which there was at this time \$676,132.34 and that is separate from the reserve fund. We have in the refunding interest account \$676,132.34 and in the reserve account \$373,860.60.

RFC has not demanded payment of us of any interest coupons on the old bonds at any time. I do not recall that we had any communication with the RFC with respect to fixing the tax [325] rate in September 1934 or in 1935 or in 1936.

“Mr. Clark: Could you make a statement, Mr. Downey, as to whether, in advance of the fixing of the tax rate each year, the RFC was notified and did approve of the proposed tax rate?

Mr. Downey: I am quite sure they were not advised in advance but they always were advised after the tax rate was fixed.”

Counsel for petitioner stated that in lieu of imposing a tax of a specified amount for the purpose of meeting the requirements of the RFC loan the District allocated a certain percentage of the power revenue for meeting the RFC interest and the reserve.

Respondent's Exhibit “F” is a letter dated October 21, 1938 from Reconstruction Finance Cor-

(Testimony of E. E. Neel.)

poration to Mr. H. T. Sargent, Secretary Merced Irrigation, and is summarized in the Appendix. (p. 764)

Respondent's Exhibit "G" is a letter dated November 3, 1938 and is summarized in the Appendix. (p. 765)

Respondent's Exhibit "H" is a letter from Reconstruction Finance Corporation and is summarized in the appendix. (p. 765)

The respondents read into the record the following letter:

"December 17, 1935.

"Mr. H. P. Sargent, Secretary,

"Merced Irrigation District,

"Merced, California. Re: Docket No. Ref 58.

"Dear Sir:

"Your attention is directed to the formal resolution of this corporation authorizing loan to the above district, and contract with the district which provides, among other things, as follows:

" "In each year the borrower will prepare an estimate of the amounts which it will be required to pay out during each month of the following year, a statement of the cash it then has on hand and an estimate of the cash it will receive during each month of the next year. Such estimates, particularly during the earlier years, shall provide for building up such suit-

(Testimony of E. E. Neel.)

able reserve as may be required by the Division Chief and Counsel for payment of principal and interest in bad years. Such estimates shall be submitted to this corporation within sixty days prior to the [326] date when the rate or rates of assessments or charges are fixed in each year, and the borrower agrees that in levying taxes, assessments or charges for the following year, it will comply with all reasonable suggestions or requests made to it by this corporation in connection therewith.'

"You will note that the above resolution and contract provides that the district shall, within sixty days prior to the date when its annual levy of assessments for all district purposes shall be fixed, submit estimates of its requirements and contemplated levy to this corporation for our approval. If it is contemplated that the levy for the coming year be fixed on or prior to February 1, 1936, may we suggest that these estimates be forwarded us at your very earliest convenience for our approval?

"Yours very truly,

C. Y. DODDS,

"Chief Engineer, Drainage,
Levee and Irrigation Division."

Respondents' Exhibit "I" is a balance sheet for the period ending June 30, 1935, and is set out in full in the Appendix. (p. 766)

(Testimony of E. E. Neel.)

The Witness: Respondents' Exhibit "I" was before the date of the disbursement of any funds by the RFC in August or September.

Respondents' Exhibit "J" is a financial statement and is set out in full in the Appendix. (p. 774)

Respondents' Exhibit "K" is a financial statement and is set out in full in the appendix. (p. 774)

It is stipulated by counsel for the District that statements in like form to respondents' Exhibit "J" were sent periodically to the RFC.

Respondents' Exhibit "K" is similar to Respondents' Exhibit "J" except for the period ending June 30, 1938 and are set out in full in the Appendix. (p. 784)

Respondents' Exhibit "L" consists of three letters fastened together. One dated March 18, 1938 from Frank J. Keenan to Mr. Sargent, Secretary of the District, one dated March 22, 1938 written by the petitioner to Mr. Keenan and the other dated April 7, 1938 written by Mr. Keenan to Mr. Sargent and are [327] summarized in the Appendix. (p. 791)

It is stipulated that it is Exhibit "J" that is referred to in Exhibit "L".

Respondents' Exhibit "M" is a transmittal letter dated June 24, 1938 together with a document designated "Exhibit 'A'" showing a statement of old securities deposited for refinancing and is summarized in the Appendix. (p. 795)

It was stipulated that this particular requisition covers one bond but a similar transaction or similar

(Testimony of E. E. Neel.)

exhibits were sent in connection with all or substantially all of the bonds including those that were taken up in October, 1935. They all carried what we call Exhibit "A" and which is similar to the one offered so it applies to all bonds that same form.

Respondents' Exhibit "N" is a confirmation sent by Reconstruction Finance Corporation to petitioner and is summarized in the Appendix. (p. 796)

It is stipulated that forms similar to Respondents' Exhibit "N" were sent out annually by the Auditors to the RFC.

The Witness: The District now has on hand in these funds that are being maintained under the arrangements with the RFC \$676,132.34 in the interest fund and \$373,860.64 in a reserve fund. All interest has been paid on the RFC loan up to July 1, 1938. These two sums aggregate \$1,049,992.98. We have in our general fund today approximately a half a million dollars. In other words we have on hand today something in excess of \$1,500,000. When we started out this venture we were practically without funds; that is, when we started out to get our refinancing done. There is something over a half million dollars of interest and principal due on the outstanding bonds.

By stipulation excerpts from the minutes of the Board of Directors of petitioner taken from Vol. 8, page 90 [328] was read into the records.

“Upon motion of Director Wood, seconded by Director Wolfe, all bills presented were approved and warrants numbered 25,251 to 35,287, inclusive, in the amount of \$2,765.33 were ordered paid out of general fund, and warrant No. 35,288 in favor of the Federal Reserve Bank of San Francisco, being for interest on money loaned by the Reconstruction Finance Corporation for the period July 1, 1936 to January 1, 1937, in the sum of \$151,889.71 was ordered paid out of the refunding bond interest fund.”

It is further stipulated that the excerpts from the minutes refers to respondents' Exhibit “A” which was the warrant drawn in favor of Federal Reserve Bank.

The following excerpt is taken from page 196 of the minutes, July 13, 1937:

“Whereas, it appears that in the original resolution that RFC authorizing a loan to this district, that in case of litigation affecting the RFC that they may designate an attorney to represent their interest and that the District shall pay the fees of any such attorney designated by them; and

“Whereas, it appears that it was necessary for the RFC to bring suit against the Merced Irrigation District to protect its right under certain bonds and coupons which they are hold-

ing, said bonds and coupons being the original bond issues of said district; and

“Whereas, it appears that the RFC has designated and employed Mr. Morgan Spicer as its attorney in the suit entitled Reconstruction Finance Corporation vs. Merced Irrigation District, filed in the Superior Court of the County of Merced, State of California, on June 12, 1937, to protect its interest in said suit;

“Now, therefore, be it resolved that Morgan Spicer, an attorney of San Francisco, California, designated by the RFC to protect its legal rights in a suit entitled ‘Reconstruction Finance Corporation vs. Merced Irrigation District be and the same is hereby accepted by this board, and said board to pay the attorney his proper fees for services performed, on motion of Director Robinson, seconded by Director Wood, the foregoing resolution was adopted.”

[329]

It is stipulated that the action referred to in the resolution last quoted from was filed June 10, 1937 in the Superior Court of Merced County by the Reconstruction Finance Corporation through Mr. Morgan Spicer as counsel against the Merced Irrigation District which was an action at law claiming to collect the amount of past due bonds and coupons that the RFC claimed to hold at that time of the old issue and that in connection with that action other bondholders intervened and the action

was finally enjoined by the Court or by virtue of the act in a proceeding under the Irrigation District Refinancing Act.

It is further stipulated that in that proceeding the District did undertake to and did pay the attorneys fees of the counsel for the RFC.

Respondents' Exhibit "O" for identification is described or summarized in the Appendix. (p. 797)

Respondents' Exhibit "P" consists of the petition for debt readjustment commencing on page 10 of Respondents' Exhibit "OO" without the exhibits that follow it.

Respondents' Exhibit "Q" consists of the Findings of Fact and Conclusions of law commencing on page 228 of Respondents' Exhibit "OO".

Respondents' Exhibit "R" consists of Final Decree of United States District Court commencing on page 275 of Respondents' Exhibit "OO".

Respondents' Exhibit "S" is a resolution of petition adopting the so-called cash offer plan and is summarized in the Appendix. (p. 798)

Respondents' Exhibit "T" is a copy of the Petition for Debt Readjustment in the Superior Court of the State of [330] California in and for the County of Merced in the matter of the Petition of Merced Irrigation District for Debt Readjustment number 11675 and is summarized in the Appendix. (p. 809)

Respondents' Exhibit "U" is a resolution adopting the plan of readjustment of bond indebtedness by petitioner July 13, 1937, a copy of which was

part of the record in the proceeding in the State Court referred to in Respondents' Exhibit "T" and is set out in full in the Appendix. (p. 815)

Respondents' Exhibit "V" is a copy of the acceptance of the plan of readjustment of indebtedness by Reconstruction Finance Corporation, the original of which is filed as a part of the proceedings in the State Court under respondents' Exhibit "T" and is set out in full in the Appendix. (p. 820)

Respondents' Exhibit "W" is a printed copy of the notice sent out by petitioner in the proceeding in the State Court referred to in Respondents' Exhibit "T" and is set out in full in the Appendix. (p. 824)

The following is a copy of the opinions delivered by Judge Alfred S. Ross of the Superior Court on March 10, 1938, directing an Interlocutory Judgment in the State Court proceeding referred to in Respondents' Exhibit "T":

"In The Superior Court of The State of California, In and For the County of Merced

"PETITION OF MERCED IRRIGATION DISTRICT, ETC.

"I am inclined to set forth at length my reasoning in reaching a decision in this matter, but have concluded that no useful purpose would be served and will therefore be brief. I will say that I appreciate the problems which

have been involved, and that each party has been sincere and that the presentation of the case has been ably done on all sides.

“I realize the importance of the case to both the district and to bondholders, who, as one counsel put it, have staked their savings, great or small, on these bonds by which the district’s construction was made possible. The rights of all are entitled to earnest consideration. [331]

“The main points of the case presented have been the matter of constitutionality of Chapter 24, Statutes of 1937, the question of the legal position of the R.F.C. as to the bonds it holds, and the general fairness or unfairness of the plan.

“As to the constitutional question, I have reopened the matter, and considered it thoroughly. The arguments both pro and con are very cogent, but I still feel that the statute should be upheld as a proper exercise of the legislative power of the state, the facts set forth in the urgency clause being considered as true and despite what might seem a violation of property or contract rights, but which the legislature apparently felt was a protection of those rights from almost complete extinction if such a statute were not passed.

“As to the R. F. C., I still hold that under the particular contractual arrangements existing here, it is the owner of the bonds it holds subject to the promises and plans contained in

the agreements, and thus comes properly within the statute. Perhaps its ownership can be terminated on repayment of the money advanced by it, but in the meanwhile it owns the whole \$14,000,000 of bonds, and if this plan of re-financing fails, it too may be lucky to get 20 cents on the dollar for them.

“The condition of the district is not rosy. I have examined all the evidence carefully and think the 51 cents proposal is fair. True, this bond defaulting history of this and other irrigation districts has been a disheartening period of California’s financial history and people who put their savings into bonds cannot be blamed for their bitterness. But a half loaf is better than no bread at all, and at the time this refinancing was started and even now the plan proposed seems fair. The bondholders will get at least part of their money back, and the district will be given a further chance to work out its salvation.

“I therefore direct that an interlocutory judgment be entered as provided by section 8 of the Act, and request counsel for the petitioner to prepare findings and judgment and that the latter provide for a continuance of the matter to a future date for final hearing with respect to the value of the bonds owned by the non-accepting holders.

“March 10th, 1938.

“ALBERT F. ROSS,

“Judge of the Superior Court.”

It is stipulated by counsel that the opinion above quoted is the last act that has taken place in that proceeding and that the Findings and Judgment have not been prepared or signed and that is the status of that case now.

Excerpts from the testimony of Mr. Sargent taken at the prior proceeding in this Court was read from pages 367 and 368 of the transcript of that proceeding and is summarized as follows:

The Witness: On January 1st, 1936 we paid the RFC certain moneys. That was 4% on the amount of money disbursed from October 4 to December 31, 1935. By disbursed, I mean the amount of money disbursed by the RFC through the Federal Reserve Bank to the bondholders. We did not receive any receipts for that when the payment was made. We received back the receipted warrant—cash warrant. The RFC had advanced a certain sum of money to the bondholders and taken old securities as security for that loan and under the resolution of the RFC agreement the loaning obligation of the District was to 4% on any money that they disbursed for our account and they billed us for that amount of interest due on the amount disbursed up to the present time and we paid it.

Respondents have closed their case in chief on the RFC issue and thereupon the following occurred:

“Mr. Downey: I have some rebuttal testimony. In rebuttal, your Honor, we desire to show that, quite aside from the legal aspects of these resolutions and contracts which we think determine the respective rights of the parties, and consistently, the RFC has asserted ownership of these bonds. I offer in evidence now a certified copy of the complaint filed by the RFC against the Merced Irrigation District in the Superior Court of the County of Merced, dated June 10, 1937, wherein the Reconstruction Finance Corporation alleges that it is the owner and holder of certain [333] bonds, to-wit, those of the numbers, issue, division, date, dates of maturity and principal amount, set forth in the list attached hereto, marked Exhibit C. Exhibit C lists what we have spoken of here as the old securities held by the RFC up to that date, aggregating a total principal of \$14,640,000. May I have that marked as Petitioner's Exhibit No. 17?”

Petitioner's Exhibit No. 17 is a copy of the complaint filed by RFC against petitioner in the Superior Court of the County of Merced dated June 10, 1937 and is summarized in the Appendix. (p. 648)

Petitioner's Exhibit No. 17 is objected to by re-

spondents on the ground that having a date long after the original transcript it constitutes nothing but a self-serving declaration of the parties thereto and it further appearing that it was filed pursuant to an agreement to pay counsel fees, etc. between the Reconstruction Finance Corporation and petitioner. [334]

Objection is overruled.

Counsel for petitioner stated that the action was filed by Brobeck, Phleger & Harrison, as attorneys for the Reconstruction Finance Corporation and attorneys for certain dissenting bondholders in this action, and they subsequently withdrew as attorneys and Mr. Morgan Spicer was substituted shortly after the complaint was filed. They are apparently the general counsel for the Reconstruction Finance Corporation and that suit was filed apparently without knowledge of the fact that they also appeared in this proceeding as the dissenter. And as soon as that fact came to the notice of the office I was called up and told that they were going to substitute counsel and they did substitute Mr. Spicer.

Counsel for petitioner made the following statement:

“I want to state this, your Honor, that at the time these suits were filed, many of them, by dissenting bondholders, with respect to the statute of limitations on these bonds I called the counsel for the Reconstruction Finance Corporation in Washington and advised him

that these suits were being filed and that the coupons which matured July 1, 1933 were outlawing, and that they should take some steps to protect their rights. I do not know that I first called that to their attention, but I felt that they should know about it; and that subsequently they directed the filing of suit. Now, to the extent that they may have been unaware of the fact that the coupons, under our law, were about to outlaw, they received that information from me. I think I talked to Mr. Satterfield on the long-distance phone about it."

Counsel for petitioner stated further that the district has never appeared in the action. As a matter of fact shortly after the action was filed complaints in intervention were filed in that action by a number of protesting bondholders and then the state reorganization proceeding was filed and then the court ruled that pending the determination of the state reorganization proceedings all of these actions, whether by the Reconstruction Finance Corporation, or the dissenting bondholders, were stayed. It was not an injunction. The law itself provides that upon the [335] filing of state proceedings a plan of reorganization should be temporarily put into effect and that no action in any legal proceeding should be taken inconsistent with the plan, and we came up before Judge Ross and the question was as to whether the Court would pass on those mat-

ters, and it was held in view of the reorganization proceedings, that all of these proceedings were at a standstill. My recollection is that Judge Ross ruled the complaints in intervention were properly filed but that proceedings thereunder were stayed, and the same ruling pertained to the mandate and to the other actions that were pending against the District.

Mr. Cook asked the following question:

“Would this be a fair statement, counsel, that you suggested to the Reconstruction Finance Corporation that it was desirable that they should file this complaint that you have put into evidence; that the suggestion came from you?”

To which counsel for the petitioner replied:

“I certainly did urge upon Mr. Satterfield the advisability of filing suit to protect against the statute of limitations on these coupons. I did not attempt to argue with him as to whether they owned it, because it was unnecessary. He asserted ownership.”

Counsel for petitioner also stated that it was his recollection that at the time the complaints in intervention in the RFC case were argued before Judge Ross that the District by its counsel appeared and resisted the complaints in intervention.

Counsel for the petitioner read into the record the petition by Reconstruction Finance Corpora-

tion filed in the proceedings in this court in the first bankruptcy action under Section 80 and being dated August 26, 1935 by Orrick, Palmer & Dahlquist as attorneys for the Reconstruction Finance Corporation.

Respondents objected to the offer on the ground that it was self-serving, incompetent, irrelevant and immaterial, *ultra vires* and failed to lend substantial support to either the [336] position of the petitioner or respondents. Objection was overruled. The petition being summarized states that the petitioner is an agency of the United States of America; that on or about the 19th day of April, 1935 a verified petition in bankruptcy was filed by petitioner, Merced Irrigation District for confirmation of a plan of readjustment of its debts under bankruptcy act as amended in 1934. That a plan of readjustment had been prepared, accepted and approved by Merced Irrigation District, and the holders of bonds of said district in the aggregate principal amount of \$14,849,000 have consented to and agreed to the plan of readjustment and deposited the bonds with the depositaries appointed for the purpose. That the Reconstruction Finance Corporation has agreed to purchase the outstanding bonds of the district. That Reconstruction Finance Corporation is prepared to, is ready and willing to purchase all of the outstanding bonds of the district which have been deposited with the depositaries and that said Reconstruction Finance Corporation is

likewise prepared to purchase any of the outstanding bonds not heretofore deposited; that the petitioner has by reason of this agreement purchased said outstanding bonds and interest in the litigation. That certain of the outstanding bonds are registered as to principal and interest in the name of the owner of said bonds and upon their purchase said Reconstruction Finance Corporation proposes to cause them to be re-registered in its name as the lawful owner thereof. That Reconstruction Finance Corporation will by the purchase of said outstanding bonds of the District succeed to all the rights, privileges, benefits of the original bondholders; that said Reconstruction Finance Corporation as a creditor affected by the plan, consents to and accepts the plan of readjustment and consents to the proceeding and prays that the plan be approved.

Petitioners' Exhibit No. 18 is a resolution of the Board of Directors of Petitioner waiving the Statute of [337] Limitations as to the bonds described in the action filed by the Reconstruction Finance Corporation and is dated the 15th day of June, 1937 and is summarized in the Appendix. (p. 650)

Petitioner's Exhibit No. 18 was objected to on the ground that it was *ultra vires* and beyond the power of the petitioner to alter the contract between the bondholders and the [338] District. The objection was overruled.

It was further stipulated as to the status of respondents that West Coast Life Insurance Company

is a corporation engaged in insurance business with its principal place of business in San Francisco, and that this corporation is now and at all the times involved in these proceedings has been the owner and holder of the bonds and coupons mentioned and described in its answer and in the proof of claim and that the bonds and coupons in the answer and proof of claim are unpaid as alleged in the answer and in the proof of claim and were presented for payment as alleged and that all of the bonds held by West Coast Life Insurance Company were presented for certification and were certified as legal investments for insurance funds and trust funds generally and at the time they were purchased they were purchased for a figure approximately at par and that the status of the bonds of the other respondents who appear are as indicated in their respective answers. The stipulation was made subject to correction of any obvious errors.

Petitioners' Exhibit No. 19 apparently was not allowed.

Petitioners' Exhibit No. 20 is a letter from Reconstruction Finance Corporation, dated July 1, 1938, and is summarized in the Appendix. (p. 652)

“Mr. Childers: May I inquire, is that in answer to some of the letters which have gone in?

Mr. Downey: I can't tell you, Mr. Childers. What I have done, your Honor, there has really been a vast amount of work to this—we turned our files over to these gentlemen. They went

to Merced Saturday and they worked on them, and we worked with them last night. I hesitate to tell your Honor how many letters and documents there are, but they picked out a few which were introduced here today, which are letters either from Mr. Keenan or [339] from Mr. Sargent in which they refer to a loan. It does not give your Honor a true picture of those files at all, because, constantly, as I will show you, they are spoken of as "a purchase, purchase, purchase," with the usual loose nomenclature that arises in any letter that is dictated. Now, to rebut any impression that might be derived from letters of that kind, I am simply taking the files that they have gone over and taking at random a few letters on which the very opposite appears on the face of the letter, not because I deem it material, your Honor—I don't. You can't change a contract by what some accountant, some officer or what an attorney calls it. You have got to determine it by the record, but they have asked to go into this and they have gone into it, and I certainly have the right to go through the files and take out letters which rebut that impression, which I think is a very mistaken impression.

The Court: I did not hear you object to any of that Mr. Downey.

Mr. Downey: No, your Honor, I did not.

The Court: I thought you did not.

Mr. Childers: If your Honor please, here is the thought: That unless these letters have direct reference to the letters that went in, it would seem it would be very remote; it would be quite immaterial; it would be irrelevant; and it would be nothing short of self-serving. But going just a little bit further, we did to some extent—I had the privilege last night of spending a half hour or so with the files. Well, of course, the files are full. Nearly every letter—dozens of them—refer in some instance to “purchase” and in some instances to “loan.” I believe “loan” appears twice to “purchase” once. That is my own impression. But you would have to have the whole file, literally, I imagine, hundreds of letters, wouldn’t it be?

Mr. Downey: Certainly hundreds. [340]

Mr. Childers: If you are going into this sort of evidence it would seem it would hardly be proper unless it refers to the letter and the subject matter of the letter that has been introduced in evidence. In that instance, I think we would hardly have the right to object.

Mr. Chase: If the court please, I might call attention to the fact that the letter of Mr. Keenan that I introduced was really introduced as secondary evidence of what the accounts of the Reconstruction Finance Corporation showed; that is, his letter stated that, accord-

ing to their records, they held the \$14,000,000 of bonds as security for the loan of \$7,000,000. I did not introduce it as necessarily Mr. Keenan's expression of interest, but rather as evidence, in the absence of the books themselves, of what the books showed according to Mr. Keenan's letter transmitted in the ordinary course of business.

The Court: Of course, the subject matter of the correspondence was the status of the transaction; that is to say, the matter that the dissenting bondholders sought to bring to the attention of the court was the way in which the transaction was represented by those who spoke for the Reconstruction Finance Corporation. I am inclined to think that the correspondence, unless it is a part of the letters which have already been introduced, is not admissible. If it relates to the letters which have already been introduced, then of course it is admissible, because an isolated letter can not be pulled out by a litigant and presented as an evidentiary entity, without the entire correspondence being before the court. The other side has the right to object to that. But to go farther and to seek to introduce the contrary by this statement, I think they come under the rule of exclusion, especially those that are dated subsequent to the filing of the petition here in June of this year. Any correspondence that is contemporaneous with the letters introduced by

the [341] dissenting bondholders, which is explanatory of statements made therein, would be rebuttal evidence on that; but otherwise, they are injurious and self-serving declarations, especially those that pertain to matters that were written subsequent to the filing of this petition.

Mr. Downey: Then, your Honor, you would feel that I should restrict my offers, either to correspondence that is tied in with their correspondence or that can be shown to be contemporaneous or practically contemporaneous with the purchase of some bonds?

The Court: That would be my thought. Otherwise you are apt to get into a limitless investigation of correspondence between agents of this body, which is not an essentially governmental entity; it is a federal corporation which has peculiar status, which I think has never been just precisely determined judicially—at least, I haven't any knowledge of the status of the Reconstruction Finance Corporation having been definitely determined judicially by any of the federal courts. It has a peculiar makeup; it is quasi public, yet it is a federal corporation. It functions the same as any other corporate entity would function. I do not believe that a letter written by an attorney for the Reconstruction Finance Corporation has any greater efficacy on determining the status

of a transaction of that entity than the attorney for any other corporation has, unless he be an officer who is authorized by proper credentials to speak for the corporate body.

Mr. Downey: Then, your Honor, I will see if there is correspondence that falls somewhere within those limits tonight; and if so, I will offer it in the morning.

* * * * *

Mr. Downey: May it please your Honor, we now desire to offer in evidence the answer of Mr. Keenan of the Reconstruction Finance Corporation to the letter of the district dated June 24, [342] 1938, and which is Respondents' Exhibit M, reading as follows: (Reading letter down to and including "Dear Mr. Sargent.")

Mr. Chase: I would like to at this time enter an objection that this is not responsive to the exhibit which was introduced in this respect, that the exhibit introduced really was the tabulation and the other was just a letter of transmittal.

The Court: The objection overruled.

Mr. Chase: I would like it to be noted that that letter was returned after the litigation was commenced.

(Mr. Downey read the balance of the letter)

The Clerk: Petitioners' Exhibit No. 20 (set up in appendix. (page 652))

Mr. Downey: Mr. Clerk, I think that Exhibit 19 was the one that was offered and re-

jected by the court yesterday. Or am I wrong? What was Exhibit 19? I think I offered it.

The Clerk: This is it.

Mr. Downey: Oh, yes. That was admitted, then.

The Court: That is my understanding.

Mr. Downey: Now, your Honor, we also desire to offer certain typical letters between the Reconstruction Finance Corporation and the Merced Irrigation District which, in accordance with your Honor's ruling yesterday, have been narrowly restricted and confined in this: They are limited to letters written contemporaneously with respective disbursements of the Federal Reserve Bank for bonds of the district. They relate to bonds which are listed upon what Mr. Chase yesterday accurately referred to as Schedule A. Mr. Chase's Exhibit M yesterday was a letter transmitting what we call Schedule A. As these bonds are taken up, a schedule is sent in by the district to the Reconstruction Finance Corporation, listing the bonds, and each of them is numbered, they being schedules 1, 2, 3 and 4 but all being Schedule A. The letters which I am offering, your Honor, are the letters sent by [343] the district to the RFC and the answers of the RFC acknowledging the Schedule A, and are similar in character to Exhibit M on behalf of the respondents and are contemporaneous, or

practically contemporaneous, with the disbursements.

The Court: May I see Exhibit M? Proceed.

Mr. Chase: Is there an offer of those as yet?

Mr. Downey: I am offering these letters.

Mr. Chase: All right. To which offer, your Honor, we desire to object on the ground they are incompetent, irrelevant and immaterial, and that Exhibit M was offered for the purpose of showing accounting, Exhibit I accounting paper which was sent with all of these bonds. I do not think it is necessary to put in every letter of transmittal and every acceptance. I do not think they are particularly material one way or the other, and are self-serving, incompetent, irrelevant and immaterial.

The Court: Objection overruled."

Petitioners' Exhibit No. 21 is a group of letters and summarized in the Appendix. (p. 653)

It is admitted by counsel for petitioner that the only election that was held in the district at which any proposal was voted upon for the approval of a contract between petitioner and RFC is the election mentioned in the complaint contained in the judgment roll or copy of judgment roll which was introduced in evidence (Exhibit 14) and that was the only election relating to this particular plan. [344]

At this point counsel for petitioner rested his case so far as the relationship of the district to the

RFC is concerned and respondents without waiving the pleas in abatement, in bar or for want of jurisdiction moved to dismiss the petition and for a determination that the Reconstruction Finance Corporation is not a creditor materially affected by the plan on the ground of insufficiency of the petition, insufficient evidence to show that the Reconstruction Finance Corporation is creditor affected by the plan or entitled to vote as a creditor upon the proposed plan and that the evidence shows that the Reconstruction Finance Corporation is a creditor which cannot consent because it has received an illegal consideration and preference to obtain its consent as it is now receiving interest upon its claim which no other creditor is receiving; on account of the collusion of the parties shown by the effort of the district to aid this creditor to establish its claim in preference to others; and on the ground that the plan cannot be confirmed because it now appears that the consent of two-thirds of the creditors effected by the plan cannot be obtained.

The motion was denied without prejudice to a review of the ruling at the conclusion of all of the testimony if it is deemed to be erroneous.

E. E. NEEL,

being recalled as a witness on behalf of petitioner,
being duly sworn testified:

I have prepared an exhibit showing the present debt structure of petitioner under the old bonds of

(Testimony of E. E. Neel.)

\$16,190,000 assuming now that that debt is existent. None of the bonds and coupons of the old securities of \$16,190,000 have been taken up or paid since July 1, 1933. We can forget all of the obligation on the bond debt up to July 1, 1933 and all of my statements are so predicated. And since July 1, 1933 there [345] have been no payments on coupons or bonds. All obligations at the present time with respect to both maturing bonds and maturing coupons are paid or taken care of with the exception of the bonds and coupons due July 1, 1933 and subsequent. The interest coupons from July 1, 1933 to and including July 1, 1938 totaled \$5,194,925 and the bond principal in default commencing with January 1, 1934 totals up to July 1, 1938 \$386,000 and that makes a total of \$5,580,925.

The respondents objected to the introduction of any testimony which tends to show that the indebtedness of the district is based on \$16,190,000 on the ground that it is incompetent, irrelevant and immaterial because the evidence does not show that that is the indebtedness of the district. The objection is overruled and the Court states that the objection may be considered to be interposed to each question and unless otherwise noted the same ruling is made after each question on that point.

The Witness: Many of the coupons and bonds have heretofore been presented for payment and marked "not paid for want of funds" and have been regis-

(Testimony of E. E. Neel.)

tered for payment. The accrued interest on the registered bonds and coupons to December 31, 1938 amounts to \$1,066,890. The installment of bond interest which would mature according to the terms of these old bonds on January 1, 1939, July 1, 1939 and January and July 1, 1940 inclusive of maturities up to and including July 1, 1938 will amount of \$7,035,205. In addition to that the principal maturities in 1939 and 1940 including the \$386,000 principal already in default amounts to \$646,000. That would make a grand total of \$7,681,205. Commencing with October, 1935 and continuing right through to the present time the District has paid to the Reconstruction Finance Corporation 4% on the liquidating value of the bonds taken up. [346]

Question:

“Now, then taking the total of all these payments to the Reconstruction Finance Corporation from October, 1935 to date, and including the payments which would be made in January, 1939 and July of 1939 what would be the amount?”

The respondents objected to the question as not properly setting forth the situation and tends to vary the terms of the written contract that the petitioner has relied upon, incompetent, irrelevant and immaterial. The objection was overruled.

The Witness: The payments to Reconstruction Finance Corporation including payments which

(Testimony of E. E. Neel.)

would be made in January 1939 and July 1939 amount to \$1,127,485.00. Based upon the figures which I have given and the gross value of the tax rolls and the amounts with respect to which I have testified the tax rates required to be levied next September under Section 39 of the Irrigation District Act would be \$68.83 for each \$100 valuation.

Petitioner's Exhibit No. 22 is the exhibit prepared by Mr. Neel and is set out in full in the Appendix. (p. 660)

The Witness: The figure I used for the gross rolls was \$11,245,645. The total amount to be levied would be \$7,553,658. I have used the estimated power income at \$500,000 which under the present interest requirement would increase our present balance in the refunding fund to approximately \$1,200,000. That is based on the \$3.00 rate which was actually levied in September, 1938. The last date when the district levied the so-called legal rate was September, 1932 and that was \$8.90 per hundred valuation and resulted in a delinquency at the time of 62.80% and that was the last tax rate that was levied for the purpose of servicing the outstanding bond issue. After that the district took advantage of what is known as Section 11 of the District Securities Commission Act providing for the levy of a rate based on the [347] ability of the land to pay and all tax rates since that time up to

(Testimony of E. E. Neel.)

and including September, 1938 have been based on that legislation. There has been no levy since 1932-33 for bond service. The tax rate in each of the years following the legal rate in 1932-33 of \$8.90 was for the year 1933-34 \$1.00; 1934-35 \$1.70; 1935-36 \$3.00; 1936-37-38 \$3.00; 1938-39 \$3.00. The tax rate including the tax rates as far back as 1928-29 have been placed graphically on this chart. The rate for 1928-29 was \$6.00. That included bond service. And the rate for 1929-30 was \$6.00. That included bond service. And the rate for 1930-31 was \$5.90 and the rate for 1931-32 was \$5.60 and the rate for 1932-33 was \$8.90. This chart represents graphically the rates for the period testified to together with the line indicating the estimated rate of \$68.82 which according to my testimony would have to be levied next September if the District were servicing the outstanding bonds.

Petitioner's Exhibit No. 23 is the chart from which the witness has been testifying and is set forth in the Appendix. (p. 662)

The Witness: At the present time, that is to say

(Testimony of E. E. Neel.)

November 1, 1938, the total amount in default of both bond principal and interest and interest on the registered coupons, is \$6,585,812. I have caused a graph to be prepared showing the entire \$16,190,000 bond issue graphically as to the different maturities. The entire block shown on this graph, irrespective of color, would indicate the bond principal and bond interest as it would mature under the \$16,190,000 bond issue. That shows that the peak of payment including both principal and interest under that bond issue would not be reached until 1951. The graph shows that the bond principal is going down as the bond principal is being retired. But there is an ascending scale of payment required under the bond issue and would not reach its peak as I said until 1951, and thereafter there [348] would be nearly as high a peak in 1962. Still referring to the graph there has been indicated in this square marked "interest paid" in yellow, the total amount of interest paid by the district on that bond issue superimposed upon the block representing the entire issue. That shows interest paid up to July 1, 1933. The interest in default is shown by pink color and the principal paid is shown in green and the principal in default is shown in kind of red. The total bond service annually, principal and interest, on July 1, 1933 was \$954,400 and that compares with what would have been a peak had the bond service been met in 1951 of \$1,280,700.

(Testimony of E. E. Neel.)

The chart graph from which the witness has been testifying is offered in evidence as Petitioner's Exhibit No. 24 and is set out in full in the Appendix. (p. 665)

The Witness: I testified that the delinquency in the last legal rate levied in 1932-33 was 62%. That delinquency has been materially cut down since the levy of the low rates and there has been put into effect a plan of paying delinquent installments on a ten year basis.

I have a complete record of tax levies and the resulting delinquencies and the delinquencies that have been made up with particular reference to delinquencies that have been met after the \$8.90 rate and subsequent to the \$1 and \$3 rates. I have on this exhibit of the delinquent tax rolls as of November 1, 1938 a notation showing the tax rate from 1928 to the present time after the column showing the valuation of the land in the district. I show the total amount of the levy for each year based on that tax rate and the collections to the delinquency date and the amounts delinquent the last Monday in June according to amount and percentage. In the next column I show the delinquency collection from the original date of delinquency right up to the present time. That includes many of those ten year installment payments. [349] I then show the present uncollected amount—the percent still remaining un-

(Testimony of E. E. Neel.)

collected—and I have added to that the penalties and costs. I then show a column of land deeded; that is where the district has taken the land and I deduct that from the uncollected balance and the penalties and costs are dropped. In other words, the lands take the place of the delinquent amount and that leaves in the final column the amount delinquent as of the present date.

The plat or compilation from which the witness has testified was offered in evidence as Petitioner's Exhibit No. 25, the pertinent parts of which are set out in the Appendix. (p. 667)

The Witness: I have prepared a balance sheet for the period ending November 1, 1938.

The balance sheet is offered in evidence as Petitioner's Exhibit No. 26, and is set out in the Appendix. (p. 669)

The Witness: I have here an exhibit showing all income received since the commencement of operation of the power house from the power contract. The district impounds water at what is known as Exchequer Reservoir and the water is passed through a power house before coming to the irrigation canals, generally speaking. The district entered into a contract with the San Joaquin Light & Power Corp. to sell power at a rate of $4\frac{1}{2}$ mills per kilowatt hour. That contract was for a period of twenty years with an option of renewal for twenty years more on the part of the district. The twenty

(Testimony of E. E. Neel.)

years will be up in 1944 and the option renewal period will be to 1964. I have tabulated the total of the income annually that has been received from the sale of power. The first year of complete operation was 1927. The dam was closed in 1926 and we did not get the full run-off for that year. The minimum income [350] from power for the year 1931 amounted to \$95,917.21. In the preceding year of 1930 the amount was \$308,931.19 and the amount in 1929 was \$296,412.57. From 1928 on the amounts were for the year 1929, \$296,412.57; for the year 1930 \$308,931.19; for the year 1931, \$95,917.21; for the year 1932, \$605,230.18; for the year 1933, \$316,924.89; for the year 1934, \$191,936.39; for the year 1935, \$551,114.49; for the year 1936, \$584,429.64; for the year 1937 \$625,363.45; and for the year 1938, \$707,203.96. The year 1938 has been the biggest year and the year 1931 was the poorest year. The average of the yield for the years of full operation is \$444,939.33 and that is shown on the exhibit.

The exhibit from which the witness has been testifying is offered in evidence as Petitioner's Exhibit No. 27, and is set out in the Appendix. (p. 671)

The Witness: The amount annually received from the sale of power as I have given and as stated on this exhibit represents the gross amount received for the sale of power in each of those years. There are certain operating expenses. The power operating expenses average about \$22,000 a year and the depreciation on the power plant as fixed by the

(Testimony of E. E. Neel.)

Federal Power Commission amounts to approximately \$22,000 per year on the power department only, not including the dam. Including the dam it amounts to about \$61,000 plus. Taking the average of \$444,000 gross amount for the twelve year period and deducting operating expenses of about \$22,000 and something like \$22,000 on depreciation we have a net average of about \$400,000. Depreciation on the dam proper is about \$38,000 in addition to the \$22,000 on the power house.

I have an exhibit here showing the properties which have been deeded to Merced Irrigation District on account of non-payment of delinquent taxes. This exhibit shows that a total rural acreage of 36,588 has been deeded to the district and 1550 of city [351] and town lots. The exhibit also shows property sold. We have sold out of the 36,000 odd 6,429 acres of the rural acreage and 275 of the town lots. These have been deeded to the district and subsequently sold and we still hold 30,159 acres of rural acreage and 1275 of town lots.

The exhibit from which the witness testified is introduced in evidence as Petitioner's Exhibit No. 28, the pertinent parts of which are set out in the Appendix. (p. 676)

The Witness: As the lands passed to the district if we were levying the legal rate under Section 39 it reduces the valuations in the tax rolls by the amount that has been taken off by reason of the

(Testimony of E. E. Neel.)

deeding of the property, and that pyramids. The lands still on the tax roll are required to take up the obligations of lands that pass off the tax roll. In connection with the estimate of the tax rate that would have to be levied to service the old bond issue next September, \$68 and a few cents, there is no pyramiding of the tax delinquency. That was not taken into consideration. Had the legal rate been continued after the \$8.90 which produced a delinquency of some 62% there is a possibility that it would run up into the thousands of dollars tax rate per hundred valuation, if the value of those lands deeded were deducted from it.

The respondents moved that the last question and answer be stricken as purely speculative, without foundation and only a guess, upon which motion there was no ruling.

The Witness: I estimated that the tax rate for 1933-34, if the legal rate had been levied just for the year following the 62% delinquency, would have been \$16. That is my recollection. I haven't the figures with me. It would have continued to pyramid. Projected ahead for three years you would arrive [352] at the sixty some dollar rates estimating the delinquencies on those succeeding higher rates. In other words, as the lands were taken off the rolls those that remained on the roll would be pyramided.

Petitioner's Exhibit No. 29 is the 1933 report of the Districts Securities Commission, and is set out in the Appendix. (p. 678)

Petitioner's Exhibits No. 30 and 31 are the 1934 and 1935, respectively, reports of the Districts Securities Commission, each of which is in the same form as Petitioner's Exhibit 32, and are referred to in Appendix (p. 713).

Petitioner's Exhibit No. 32 is the 1936 report of the Districts Securities Commission, and is set out in the Appendix. (p. 714)

Petitioner's Exhibit No. 33 is the 1937 report of the Districts Securities Commission, and is described in the Appendix. (p. 732)

Petitioner's Exhibit No. 29-A is the 1933 Order of the Districts Securities Commission, the pertinent parts of which are set out in the Appendix. (p. 711)

Petitioner's Exhibit No. 30-A is the Order of the Districts Securities Commission for 1934, and is described in the Appendix. (p. 713)

Petitioner's Exhibit No. 31-A is the order of the Districts Securities Commission for 1935, and is described in the Appendix. (p. 713)

Petitioner's Exhibit No. 32-A is the 1936 order of the Districts Securities Commission, and is described in the Appendix. (p. 732) [353]

Petitioner's Exhibit No. 33-A is the 1937 order of the Districts Securities Commission, and is described in the Appendix. (p. 732)

(Testimony of E. E. Neel.)

Cross Examination

The Witness: I have a series of the annual financial statements of the District starting with the year 1931 and including the succeeding years down to 1938 and have pinned these together so that they can be offered collectively.

Respondent's Exhibit "X" is the group of statements above referred to, and are set out in the Appendix. (p. 827)

The Witness: The delinquency on the tax levy of 1932-33 which was \$8.90 per hundred was \$721,-188.56 as of the last Monday in June, 1933. That delinquency has been reduced as of November 1, 1938 to \$216,252.07.

After the levy of this rate of \$8.90 the district applied to the California Districts Securities Commission for leave to have its tax rate fixed at a figure that the commission might prescribe and the district discontinued the payment of any interest or principal falling due on or after July 1, 1933. On January 1, 1933 there was a certain delinquency on bond principal and bond interest after applying the money in the bond fund and collected to date. The amount of delinquency of principal and of interest on the maturities of those bonds on December 31, 1932, after the application of the bond fund money, was \$369,715. That is less than the difference between the highest delinquency on petitioner's

(Testimony of E. E. Neel.)

Exhibit No. 25 and the sum of \$216,282.07. There were heavy collections after December 31, 1933 on the levy of \$8.90 and the aggregate of those collections on that particular levy which were made over a [354] period of a year and a half following January 1, 1933, exceeded the total bond delinquencies, principal and interest, that existed on December 31, 1932.

“Q. The district then, after December 31, 1932 and after its decision to go into default or, rather, to make levies in accordance with Section 11 of the California Districts Securities Commission Act, took out of its bond fund any and all moneys levied for the purpose of paying bond principal and bond interest and simply used those moneys for general purposes and purposes other than paying the maturities of the principal and interest upon the bonds?

A. That is correct on bonds and coupons maturing July 1, 1933 and subsequently.”

The approximate interest maturity of July 1, 1933 was \$454,200. When the District made the levy for 1932-33 it levied in the light of the maturities upon the principal and interest of the bonds which would occur on December 31, 1932 and also on July 1, 1933. Then instead of using the moneys which came in as a result of this levy and retiring the maturities of July 1, 1933, the District simply

(Testimony of E. E. Neel.)

emptied its bond fund and kept it empty thereafter except for the limited purpose of meeting the maturities of January 1, 1933 and prior thereto. I appreciate that a part of maturities of principal and interest held by the dissenting bondholders are maturities of July 1, 1933 and following, and nothing by way of interest has been paid to any of these dissenting bondholders on their bonds beginning with July 1, 1933. In addition to the moneys that came in after December 31, 1932 upon this levy of \$8.90 there were additional moneys collected upon the levies made for the three preceding years which moneys were delinquent on December 31, 1932 and these financial statements which have just gone in evidence for the years beginning with 1931 and running down to the present time tabulate year by year the payments of the delinquencies on the levy, doing that successively for each preceding year; in other words, we find in the financial statement reported each year [355] the amount of the cash collected upon the levies that had previously been made by the district for the previous year. Those moneys that came into the district by way of payment upon delinquent levies were simply taken by the District and used for general purposes after the purpose for which the original levy was made had been taken care of. That explanation, however, does not apply to the levy that was made for the purpose of paying interest that might fall due on July 1, 1933

(Testimony of E. E. Neel.)

and that amount is set up as \$454,200. That does not mean that the whole amount of \$454,200 would be available for servicing these bonds if it had not been used for general purposes because we have only collected \$320,272.93. The \$320,272.93 was placed in the general fund and if it had been placed in the bond fund it would have been available for use in retiring maturities upon these bonds of July 1, 1933.

The Witness: I have made a computation for the purpose of determining the total amount that would be in the bond fund today as the result of the collections on the levy of 1932-33 after December 31, 1932 and as a result of the collections of delinquent taxes that were delinquent as of December 31, 1932 under prior levies which embrace bond service and find the total to be \$717,932.50 which includes \$320,272.93 of 1932-33 collections. That represents all collections of all delinquencies whether or not the purpose of the levy had been fulfilled and completed. These financial statements that we get out annually also show the receipt of income from land that has been deeded to the District for delinquency of these taxes, and the district after getting title to these lands proceeds to rent them. The rental is received from the properties which have been taken upon tax tilte. The amounts are all given in the annual statement. None of that money that was received by the Dis-

(Testimony of E. E. Neel.)

trict from these lands taken in at delinquent sales was allocated to the bond fund [356] after December 31, 1932. The whole of the rental of the land has been placed in the general fund. A very substantial portion of the rental from the sale is for the delinquency in meeting the tax as an entirety, the tax levied to service the bonds and for general purposes. The sale is for the lump sum delinquent. A substantial portion of these lands were taken in for delinquency in meeting the assessment or the tax for 1932-33. I have made no computation to show how much of the rental that has been received by the District was yielded from lands that were taken in by the district for the default in meeting the tax levy of 1932-33. The greatest delinquency occurred in connection with that levy of \$8.90.

Question:

“What proportion, about, of all the land was taken in for failure to meet that levy?”

Answer:

“Well, the sum was \$148,782 in relation to a total of \$656,245.”

When the land is taken in by the District for failure to meet a particular levy then that land disappears from the tax roll and no longer responds to any obligation to service the bonds. No estimate was ever made by me as to the amount of the yield from these lands that ought to be paid into the

(Testimony of E. E. Neel.)

bond fund. No resolution was ever adopted by the Board of Directors of the District as to the use of this income from the land. The yield from these lands shown in our financial statement is net yield. That is, it is the rental that is paid to the district by the man who rents the land. I would like to correct my statement on the Board of Directors authorizing the use of that money from the land income in that it becomes a part of the total incomes which are used in connection with setting of the tax rate. In that sense, they do approve the use of it. As an estimated income in connection with setting the rate and by virtue of the [357] fact that we did take that into consideration the tax rate was that much less for bond service and everything else.

I have no direct knowledge as to whether or not a substantial portion of the land within the district was, when the district defaulted, subject to mortgages and deeds of trust.

Counsel for the petitioner stated that there were unquestionably heavy mortgages there and that it is undoubtedly true that at the time the district went into default or for some time prior thereto the holders of mortgages and deeds of trust were in many instances compelled to pay the taxes upon the land.

At this point a portion of the testimony of this same witness given in the trial of the action in the state court, as follows:

(Testimony of E. E. Neel.)

The Witness: The figures relative to the levies made by the various political subdivisions that lie within or which overlap Merced Irrigation District furnished to the California District Securities Commission for the 1936 report were obtained by me from the County Auditor and the district accepted them as being correct and sent them in to the California Districts Securities Commission and cooperated in the creation of the report which came back from the Commission. I was the Auditor during the making of all the reports that came back from the Securities Commission and I am familiar in a general way at least with these reports. Referring to page 11 of the report to the Securities Commission it is the position of the district that of these road districts the bonded indebtedness aggregating \$256,053 is upon lands of Merced Irrigation District. The truth of the matter is that these bonds which are referred to at the top of page 11 of the petitioner's exhibit are pretty much covered over the whole of the lands within the district exclusive of cities. So far as I know they cover the poor land and the good land. I haven't in mind just the exact [358] portions of the district those particular bonds cover. They are pretty well scattered. It is a fact well known by all of the officers of the district that when this district became in financial distress and commenced to go into default the landowners in the district were having trouble meeting all of their taxes, county and district taxes as well as the taxes

(Testimony of E. E. Neel.)

of the Merced Irrigation District. And there were very heavy delinquencies in the meeting of County taxes generally. When we made these earlier reports or when these earlier reports were made back to us they showed this road district bond indebtedness as it was at that time. Then we have indicated in these reports that while this district has been in this so-called bankrupt condition these bonds have been reduced, paid off to the extent indicated by comparing this final one of these reports with the earlier ones. The truth is that the entire district land, good or bad, is all subject to payment of this bonded indebtedness of the County. It is a county indebtedness and in the case of these bonds also, these county bonds, that is, these are bonds that are serviced by the levying of taxes upon a valuation assessment that we are talking about.

According to these figures there has been a gradual reduction of the bonds of these road districts since the commencement of these reports back to the District and the County bonds have been reduced from a figure above a million to the sum of \$822,000. These figures are made from records and relied upon by the district and accepted by the district as being correct. At the top of page 8 of petitioner's Exhibit No. 7 it was decided that of these \$822,000 in bonds, \$106,800 may be considered as being a lien upon the district land and that decision is based upon the percentage of valuation of the land outside the boundaries of the district and valuation of the land

(Testimony of E. E. Neel.)

inside the [359] boundaries of the district. The percent would be something like four to one. I think that was based upon the percentage of acreage—I am not quite clear.

Referring to page 9 it is my impression that the payment there concerning the 13 school districts within that, overlap Merced Irrigation District and have outstanding bond issues that might be said to be a lien upon the land in the district at the present time in the amount of \$107,600 out of a total which is given; that the payment there was also made upon the basis of the values which are actually assessed and taxed in paying these bonds. As regards these school district bonds, that bond indebtedness has been paid off in full down to the point indicated in the report of 1937 since this district became so badly in default. In other words, the principal has been met and the interest today is being met on all of these other bonds that are a lien upon the lands in this district. These reports mention that there are three cities within the district, Livingston, Atwater and Merced. The City of Merced is composed of about 7,000 people and Atwater is around 1500 and Livingston is about the same or a little smaller. (This concludes the testimony of Mr. Neel as read from the record).

The Witness: There was some increase in the payment of taxes subsequent to the time of the enactment by the legislature of relief legislation giving the mortgagors and trustors under deeds of

(Testimony of E. E. Neel.)

trust more time within which to pay. Our report for 1934 shows a most astounding increase where it shows the delinquent taxes came in amounting to \$290,732. At this point testimony of Mr. H. P. Sargent as taken at the first trial in this court was read into the record and it was stipulated that the answers as read both as to Mr. Sargent and Mr. Neel (already read) be taken in this case. [360]

Testimony of

MR. SARGENT:

My testimony was, I think, that unless the District Board would cancel the penalties and the interest and make some sort of a new arrangement for handling of the back liens already on their properties, that they would not continue to pay. Then we might take a deed. It seemed to be the view of the mortgagee and the lender or trust deed holder that he regarded the situation as so desperate that he would just let the land go unless we made a reduction in the charge against the land in some form. We received that complaint through letters and orally.

The Bank of America does not complain. They just simply go ahead and do what they see fit to do with their properties and on such properties as might be subject to deed I asked whether they wanted to save it or not. They go on and pay taxes on certain pieces and on certain pieces they say, "We have

(Testimony of H. P. Sargent.)

no further interest in it." It do not think the Bank of America is the largest lending institution in the County of Merced but it is the largest bank, and I imagine it had a considerable amount of money, as has been testified here, loaned on the land in this district. The First National Bank of Merced is a local bank and it does some lending on lands in the District. And then there is a building and loan association or two at Merced loaning money upon real property and private lending institutions and some life insurance companies and fire insurance companies that have money loaned out on land in the district and pretty generally complaints were coming from these lenders that these rates were high and they were all more or less grumbling and indicating that if we did not cut these rates they were going to quit paying taxes. (This ends the testimony of Mr. Sargent as taken from the record in the other case as above indicated.)

Testimony of

E. E. NEEL

Mr. Neel: (testimony resumed) [361]

None of the interest or penalties payable in connection with the redemption from tax sales of land that went delinquent was put in the bond fund of the district but were put in the general fund. These moneys are also shown in the figures set forth in these annual financial statements. The moneys that belong to these various funds were deposited in

(Testimony of E. E. Neel.)

banks and at all times when the amounts on hand were substantial the banks paid interest upon the money on deposit on the daily balance. The interest money from the banks were placed in the respective funds to which the interest accrued. We never made any distinction. The accrued interest on fund balances has always gone into the fund on which it accrued. After June 30, 1934 none of the collections on the 1932-33 tax levy were placed in the bond fund. After June 30, 1934 the interest on fund deposits was placed in the general fund and were deposited in the general fund in the bank and any interest that accrued on them went into the general fund.

We have today paid practically all of the maturities on these bonds accruing prior to July 1, 1933. I might state that we completed payment of all of the January 1, 1933 bond interest coupons and bonds on June 30, 1934. The District paid in full roughly \$172,600 coupons and bonds that accrued prior to July 1, 1933 and which were unpaid on July 1, 1933. A considerable portion of the bonds and coupons representing that total had been registered for non-payment. After July 1, 1933 if a person happened to hold a registered matured bond that matured prior to that date he was paid off in full of principal and interest at 7% per annum from the time of registration and in the case of coupons that have been referred to they were paid

(Testimony of E. E. Neel.)

off in full together with interest at 7% per annum. All of the coupons and bonds which matured prior to July 1, 1933 were paid off in the respective [362] order of their presentation for payment and not ahead of coupons which matured July 1, 1933 but which were registered after the coupons of January 1, 1933; but we never paid off any coupons maturing on or after July 1, 1933. We never have paid a coupon that matured prior to January 1, or prior to July 1, 1933 outside of its regular order of presentation for payment. The \$170,000 that was referred to which came into the fund as late as June 30, 1934 was paid out on coupons on the date of the order of presentation, all of these coupons having matured, however, January 1, 1933 or prior thereto. To make this entirely clear all those who voluntarily accepted the cash offer plan received 4% interest per annum from the time that they made their bonds available for refinancing to that date of October 3 or 4, 1935 provided the bonds were put in a depository's hands. The plan likewise makes no provision for compensation on account of the delay from October 3, 1935 down to the present time so far as the dissenting bondholders are concerned even though those who did assent received their money on October 3, 1935. In other words, there is a period in there of two years and a half that those who took the money voluntarily have had the use of the \$515.01 There is a very small amount unpaid on bond maturities of the district maturing

(Testimony of E. E. Neel.)

prior to July 1, 1933. It amounts to \$17,905. It is a part of this cash offer plan that that amount of money shall be paid in full with interest from the time of registration of the bonds representing that total amount.

The district carries on its books the Exchequer Dam, reservoir and water rights connected therewith at \$16,900,548. That includes the reservoir, the dam, power plant and water rights connected therewith. That is the cost of the dam and the power house; that is, the Upper Project and includes the relocation of the Yosemite Valley railroad. That includes the total expenditures [363] or costs of the works of this district and includes several hundred miles of canal. The figure as representing the Upper Project is \$11,459,696.49. That is the cost for the construction of the works, and in that is embraced the cost of moving the railroad which was approximately \$5,500,000. That is the figure for the original cost of the project. We carry a reserve which has accrued annually which totals now \$709,338.83 as a depreciation reserve. We carry on our books the remainder of the physical properties of the district at approximately \$6,000,000. That represents, generally speaking, the canal system, rights of way, and irrigation facilities for applying water to the land, including pumping plants and drainage plants, and so forth.

The occasion for the cutting of the assessment from a figure of approximately 20,000,000 to a

(Testimony of E. E. Neel.)

figure of approximately 11,000,000 or 12,000,000 was that in 1932, due to considerable changes in valuation placed on the properties, the assessment rolls were reduced by approximately one-third. The first material reduction was in 1932-33.

The basis of assessment for the district is the land alone. We do not assess the improvements, such as orchards or permanent crops like alfalfa.

The balance sheet which is petitioner's Exhibit No. 26 purports to be a true statement of the condition of the district assuming that the debt of the district constitutes the old securities; that is, the old bond account. In the liability account the amount of \$5,076,185 includes all outstanding matured bond interest coupons, and also includes all coupons which have matured since July 1, 1933. No where in this balance sheet is shown any credit against that item for the interest which has heretofore been paid to the Reconstruction Finance Corporation at the rate of 4% on its advances. The amount heretofore paid to Reconstruction Finance Corporation at the rate of [364] 4% on its advances amounts to a little in excess of \$800,000. It was paid on bond interest expense, or rather as an interest expense account.

Largely speaking, a large portion of this item of \$1,400,887.54 is accrued interest on registered coupons. There is just a few thousand dollars on registered bonds. Treating it as accrued interest on registered coupons from the date of the maturity

(Testimony of E. E. Neel.)

of the coupons it includes interest at 7% on all coupons held by the RFC maturing subsequently to January 1, 1933 regardless of any payments which have been made to the RFC on account of interest. There is no where on the balance sheet shown that item of credit against the item of \$1,400,887.54.

In addition to those items there was interest paid at 4% to depositing bondholders under the first plan up to the date of disbursement October 5th. The amount of that interest is \$168,582.00. No where on this balance sheet is there reflected the credit items for the payment of that amount.

In the liability account the amount of \$676,132.34 refunding bond interest surplus is the amount actually held by the District in cash at the present time to meet future interest requirements on the RFC loan and that is in addition to all of these other items we have talked about and the item of \$373,860.64, being the refunding reserve surplus, is an additional amount of cash which is held in the district's bank account as a reserve against future principal payments on the RFC loan, and that is in addition to these other amounts. Those aggregates reserve for future payments on the RFC loan amount to \$1,050,000. Assuming on this balance sheet that there are outstanding old bonds of \$16,191,000, those two items would be a proper credit against the bond deficit account or bond surplus account deficit of \$6,468,862.74. [365]

(Testimony of E. E. Neel.)

Referring to the same balance sheet this item of tax sale certificates of \$206,096.93, the larger portion of that represents tax sale certificates on land which is under the partial payment plan, that is, under which the indebtedness is being paid off in ten annual installments. I can't say just the amount—I haven't those figures—I can't say that it is a major portion.

Referring to Petitioner's Exhibit No. 25 which is the statement of delinquent tax rolls as of November 31, 1938, and referring to the column showing percentage of delinquencies on the last Monday in June which will be the sixth or seventh column, those delinquencies represent entirely the delinquent percentage as of the date when the tax first became delinquent in each case; that is, at the termination of the tax collecting period in each year and the delinquency at that time was at the lowest point at which it had been at any time in 1937-38; that is 6.84%. The present delinquency for the year 1936-37 levy is \$3.80. The lowering of the delinquency represents substantially the payments which have been made since the first delinquent date in redemption, and it is normally expected that some collections will be made and some are always made of those delinquent taxes after the delinquent date.

The maturities and the interest coupons due and the interest on the interest coupons on the unde-

(Testimony of E. E. Neel.)

posited bonds at the present time amount to \$623,032.11.

Not including the general fund levies the delinquencies of landowners in the district that have been paid up to date in the district are \$717,932.50 and those funds were not placed in the bond interest fund.

If we assume that the debt to the RFC at the present time consists of this \$7,500,000 odd that has been disbursed pursuant to this plan then the obligations of the district [366] are current at the present moment with the exception of the undeposited bonds. The liability would be the sum of the RFC debt plus the other outstanding bond obligations, and that is the total of all outstanding obligations on the assumption that we have made. The total debt would be about \$9,500,000 and that would be the principal and the interest on the loan. The only items besides those would be the accrued interest on the outstanding bonds other than those held by the RFC.

This proposal is to liquidate the outstanding bond indebtedness upon the basis of \$515.01 per thousand dollars of principal. That is the cash offer plan as it stood in January, 1933, or treating it as retroactive as of that date. That was the plan at that time.

At this point over the objections of respondents on the ground that it is incompetent, irrelevant and

(Testimony of E. E. Neel.)

immaterial, counsel for petitioner read into the record the preamble of emergency setting forth the facts as declared by the legislature in enacting Chapter 24, Statutes of 1937 as follows:

“That many of such districts were organized during a rapid period of expansion and inflated values and that they issued bonds in excess of their capacity to pay. That during the period of world-wide depression many of these districts became increasingly unable to meet the obligations of their bonded indebtedness, including the payment of interest thereon, and that mounting defaults in such districts with consequent pyramiding of assessments to the point of confiscation, ever increasing delinquencies and inability to sell lands foreclosed by the districts caused a condition of chaos to exist which resulted in the enactment of Chapter 60 of the Statutes of 1933 and Chapter 36 of Statutes of 1935, commonly known as ‘Section 11 of the District Securities Commission Act.’ That this act authorized, subject to the provisions thereof, the levy of assessments during the period of the emergency thereby declared to exist, based upon the ability of the land to pay and contemplated that, with such relief, ordinary economic processes would permit such districts to rehabilitate themselves through enabling them and the bondholders in agreement

to work out refinancing plans before all values within such district should be destroyed. That after the passage of said acts districts levied assessments based on the ability of lands to pay, and commenced [367] proceedings to work out refinancing plans with their respective bondholders. That in many of such districts refinancing plans have heretofore been accepted by an overwhelming majority of the bondholders and proceedings have been brought under section 80 of the Bankruptcy Act of the United States to compel acceptance of such refinancing plans by small minority groups of dissenting bondholders. That recently the Supreme Court of the United States has held that such section of the Bankruptcy Act is unconstitutional in that it infringes upon the sovereignty of the States. That as a result of this decision there is now no legal procedure by which refinancing of the present bonded indebtedness of such districts may practicably be consummated. That the excessive debt burden of such districts has so increased and pyramided during the last three years, due to the inability to meet the annual debt obligations, that any present attempt to levy assessments designed to meet such obligations of such districts in full would result in overwhelming delinquencies, would prove largely uncollectible, would raise no adequate funds for bond or other debt service, and would be of no benefit to bondholders or cred-

itors. That, unless these existing chaotic conditions are remedied, in each succeeding year an ever increasing body of lands will default in payment of assessments and will remain unredeemed therefrom. That annual assessments in each succeeding year will fall upon a progressively lessening body of land which in turn will be forced to default in greater and greater quantities. That such inevitable and wholesale conditions of default will destroy the ability of such districts to pay their bonded debts in whole or in part and to carry out the necessary public functions with which they are entrusted as governmental agencies of the State. That on the contrary of refinancing plans now under way and accepted by overwhelming majorities of the bondholders of such districts can be effected, bondholders and creditors will be benefited, land in the districts will remain in private ownership, values will be restored and such districts will be enabled to discharge their public obligations. That the adequate credit, support and maintenance of such districts as governmental agencies of the State is a matter of vital State interest and concern; that the welfare of the State, the solvency of its banking institutions and the interests of the property owners in, and the creditors of, such districts, all require the speedy settlement and adjustment of the debt defaults of all such districts so that the financial standing, credit and tax collecting ability thereof may be restored.

Therefore, to meet this condition of emergency, the police power and the power of eminent domain are hereby invoked and such irrigation districts herein referred to are hereby authorized to institute and maintain the proceedings and actions as hereinafter set forth . . ." [368]

Petitioner's Exhibit No. 34 is a pamphlet entitled October, 1938 issue of the Agricultural situation, issued by the Bureau of Agricultural Economics, United States Department of Agriculture, the pertinent parts of which are contained in the Appendix. (p. 732)

At this point counsel for the petitioner read into the record the testimony of Dr. Murray R. Benedict from the record of the reporter's transcript of the previous trial in this court over the objection, however, to the evidence on the grounds that it is incompetent, irrelevant, immaterial and too remote. Failure to produce the witness was waived and consent given to the reading of his testimony subject to the objection above noted.

DR. MURRAY R. BENEDICT,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

I have the position of professor of agricultural economics on the University of California Staff,

(Testimony of Dr. Murray R. Benedict.)
and agricultural economist with the Giannini Foundation of Agricultural Economics—agricultural economist on the experiment station, which positions I have occupied since July, 1931, continuously. I took my first collegiate work at the University of Wisconsin, took a Bachelor's degree in agriculture; thereafter, spent a short time on the staff of the University of Illinois, and then some two years as farm advisor in Minnesota, associated with the University of Minnesota; and thereafter, about eight years as head of the Department of Economics of the South Dakota State College at Brookings. And during four years of that time I also served as Assistant Commissioner of Agriculture of the State of South Dakota. Thereafter, I spent about a year and a half as a lecturer on economics at Harvard University, and then came to the position I now hold at the University of California. I have been there [369] continuously since, except for a period of about six months, two years ago, when I served with the American Statistical Association's [370] Committee on government statistics in Washington.

The Giannini Foundation is an endowed research organization, associated as an integral part of the University of California. Its work consists in the main of research studies dealing with economic problems of California agriculture and national agriculture.

(Testimony of Dr. Murray R. Benedict.)

A study was made by the Giannina Foundation under my direction with reference to the tax-paying ability of the inhabitants of the Merced Irrigation District. The major piece of the work was directly under my guidance; but we had through the period of study rather a close contact and advisory relationship with other people, both in the Giannini Foundation and in other divisions of the college.

Professor Frank Adams was a member of the general committee in charge of the study, and Professor H. L. Tolley, Director of the Foundation, advised with me. And both of those men subsequently went over the report in detail and approved it as released. They also consulted rather freely with such men as Professor Shaw in the division of soil technology, and with Professor Madison in the Division of Farm crops, and with several other specialists about the University.

This report was made as a result of the joint request by representatives of the District and of the Bondholders' Protective Committee. The first request was made in the early part of 1932.

The District had arranged for the selection of a rather large committee of representative men, a so-called committee of 27. That committee in turn selected an executive committee, and out of this grew arrangements for a fact-finding committee on which Professor Frank Adams, from the University, and myself were members. That committee requested

(Testimony of Dr. Murray R. Benedict.)

the Bondholders' [371] Protective Committee to participate, and arrangements were made for Mr. Robert Fullerton, Jr., of Pasadena, to act as an observer with that committee in respect to its general plan of procedure, and also for Mr. R. R. Underhill to act as an observer, with Mr. J. C. Cone in another phase of the fact-finding study; that was the classification of lands, which was done by Mr. Cone, not by our institution.

The report took about nine months and was completed and published in mimeographed form about January, 1933. Then at the request of the two negotiating committees, we later supplemented our first study with a consideration of the conditions in 1926, 1927 and 1928. That report came out in June, 1933. (The witness summarized the method and procedure followed in making the report, which procedure is set out in the report.)

There were at that time, I think, 1648 farms in the District of 20 acres and over. We used approximately a 20 per cent sample. 1931 was the last full year of business at the time we started the study. There had been, of course, a sharp break in prices in 1929 and just following, and we wanted to develop, for one thing, something of the change in conditions which had arisen since the period when most of these obligations were assumed. And three years back is about as far as is practicable to undertake to get a record of that kind, so we went

(Testimony of Dr. Murray R. Benedict.)

back to '29 in order to show what change in conditions had occurred during that period.

For milk, milk fat and alfalfa, the index number based on 1910 to 1914 is 100. It was 146 in 1928, 139 in 1929, 102 in 1930, 88 in 1931, 66 in 1932, 70.8 in 1933, and 88 in 1934. For the grain crop, which is prominent in that area, namely, barley, wheat and rice, the similar figures are for 1928, 112.8; 1929, 114.3; 1930, 83; 1931, 66.1; 1932, 46.4; 1933, 71.9; 1934, 81.9. The same years were used as a base for both sets [372] of figures. I have here the combined index number for California farm prices based on 1910 to 1914 as 100. In that combined index, 1929 is 146, 1928 is slightly higher, 149. Then going back, there is only one year, 1925, which is higher. That is 156. Then we have to go back to 1920 before we get as high a price level as prevailed in 1928 and 1929.

I have here a recent revision of the mimeographic circular of the University of California, of H. J. Stover, entitled "Farm Prices in California," issued in August, 1935. The index figures therein listed are as follows:

1910 is 97; 1912 is 96; 1914 is 95; 1915 is 96; 1916 is 114; 1917 is 144; 1918, 198; 1919, 210; 1920, 224; 1921, 153; 1922, 155; 1923, 135; 1924, 138; 1925, 159; 1926, 138; 1927, 139; 1928, 147; 1929, 153; 1930, 131; 1931, 91; 1932, 70; 1933, 74; 1934, 88; 1935, 91. 100 is the average from 1910 to 1914 per year.

(Testimony of Dr. Murray R. Benedict.)

The farms in the middle half of the array of class 1 lands show as a net over costs for out of pocket cash expense, labor, and county taxes, which I have classified as A and B Costs, a return per acre of, plus \$2.83 in 1929; minus \$6.47 in 1930; minus \$6.10 in 1931. For class 2 lands, the corresponding figures were for 1929, minus \$3.42; for 1930, minus \$8.09; for 1931, minus \$8.70. For class 3 lands, the corresponding figures were for 1929, minus 49 cents; 1930, minus 93 cents; 1931, minus \$1.63. This shows that with the exception of 1929, and then only with respect to class 1 lands, all of the properties being farmed, as an average, operated at a loss for said 3 years.

Taking the figures for the same three years, but this time including depreciation, the results are: On class 1 lands, in 1929, minus \$9.71; 1930, minus \$16.35; 1931, minus \$17.17. For class 2 lands the corresponding figures are: [373] 1929, minus \$10.01; 1930, minus \$16.07; 1931, minus \$16.69. For class 3 lands the corresponding figures are: 1929, minus \$1.43; 1930, minus \$2.14; 1931, minus \$3.90.

There was apparently a certain adjustment going on in there which perhaps will help to explain those figures. In the earlier stages of the District there had been some attempt to develop rather intensive agriculture on certain of the poorer grades of land. That was tending to go out of production for those types of products and be used more for grains and other field crops, so that there was

(Testimony of Dr. Murray R. Benedict.)

rather heavy depreciation on most of the intensive plantings and things of that kind that were put on to class 2 and class 3 lands. There is a table in the first part of the report which indicates some of those changes in acreage which were occurring over this period.

There were six large corporation enterprises from which we secured records in 1929. There were seven for the years 1930 and 1931. These were areas for the most part somewhat less developed than the rest of the District, although it included one or two properties that were very highly developed. For 1929, the five properties on which records were complete showed as follows: Net returns per acre above county taxes: Property No. 1, \$8.76. Second property, \$5.63. Third, minus \$1.46. Fourth, minus \$1.17. Fifth, plus \$3.46. These are being taken from page 65 of the printed report.

In 1930, the corresponding figures were, for first property, minus \$42.54 per acre. Second, minus \$21.63. Third, minus \$3. The next one is incomplete, and the next one is plus \$3.32.

For 1931, the corresponding figures are, on the first property, minus \$54.16. Second, minus \$17.29. Third, minus \$7.16. On the last one, plus \$1.25.

[374]

In general, if the corporations were operating the properties directly, they were losing rather heavily. If they were leasing the lands they showed

some small net return. One or two of these properties were very highly developed, with very large investments, which accounts for the rather high operating loss per acre.

With respect to the grain, rice and pasture lands, three divisions were made there, because the conditions were very different. The rice lands operated quite differently from the barley and grazing lands. The most of the information on these came from the books of the larger corporation operators, because they are the ones that own most of those lands.

For barley farms, in 1929 the average return above A and B costs and county taxes was minus \$10.31. In 1930, plus 33 cents. In 1931, minus \$6.03. There is a slight printer's error there—this is taken from page 66—it should be 1931 instead of 1932, as shown here. On the leased farms, they showed a small net return above their costs. The figures I have just given are for the operated farms. Leased farms, 1930, plus \$2.14. 1931, plus 19 cents. 1932, plus 86 cents.

For the rice lands, the corresponding figures are: For 1929, plus \$5.08. 1930, \$4.68. 1931, minus \$2.96.

There is a little variation there. Those include the interest on improvements at 6 per cent, because that was included in the records as the bookkeepers had them, and we couldn't separate it very well.

For the pasture lands, the returns are shown on page 67 of the report. Rentals on these lands average about \$1.50 per acre for the years 1929, 1930

(Testimony of Dr. Murray R. Benedict.)

and 1931, and for the years 1932 and 1933 about \$1 per acre. Most of these lands are not well suited for anything but grazing. County taxes averaged approximately 58 cents per acre. The difference as of 1932-1933 was [375] about 42 cents per acre net to the owner.

I also made a study for the years 1926, 1927 and 1928 with respect to some 26 properties that were representative properties. It was not possible to get as exhaustive and accurate report for these last three years.

In this latter report, for 1926 business, the acreage involved is 45,816, and the net income before taxes was \$76,006.00. County taxes amounted to \$86,658, and Merced Irrigation District Tax \$308,006. Total operating expenses and taxes, county and District, amounted to \$1,220,488, leaving, after payment of county and District taxes, a figure of minus \$318,658. For 1927 the corresponding figures are as follows: The acreage is 47,906. The net income before taxes is minus \$142,591. County taxes amounted to \$88,615. Merced Irrigation District taxes, \$290,523. And the net after both types of tax were taken out is minus \$521,729.

There is a printer's error on that page, which you probable have noticed. In the first column at the left, on page 119, there should be a minus sign before the \$163,777.

At this point Mr. Downey asked that that be noted as a correction in the report itself.

(Testimony of Dr. Murray R. Benedict.)

The Witness:

For the 1928 business, the corresponding figures are, net income before taxes, minus \$180,287. County taxes \$89,411. Merced Irrigation District assessments, \$278,934. And a net result after payment of district taxes of minus \$548,632.

For the three years the total net income for 1926, 1927 and 1928, before taxes and District assessments, was minus \$246,872. The net income after taxes for the three years was minus \$1,389,019.

Taking the situation as a whole, the District had not reached a stage yet in 1929 when the assessments that were being [376] paid were being earned by the land, for the most part. Most of the money paid the District came from outside sources as an investment, based on expectations of later improvements in value. Many individual farmers consulted told of having on other sources of income.

At this time the report itself was admitted and marked Petitioner's Exhibit No. 35.

Petitioner's Exhibit No. 35 is as follows:

Since Petitioner's Exhibit No. 35 is a booklet or pamphlet of considerable proportions and cannot be summarized a true printed copy of said Exhibit No. 35 is attached to the Appendix as Appendix "A" hereto.

Cross Examination

Q. By Mr. Clark:

The comparative table of variations in agricultural prices as represented by the United States

(Testimony of Dr. Murray R. Benedict.)

Department of Agriculture, Bureau of Agricultural Economics, is as follows:

1910 figure is 102. 1911, 95. 1921, 100 (I believe the latter should be 1912, 100). 1913, 101. 1914, 101. 1915, 98. And the 1916 figure, on the 1910-1914 base, is 118. 1917 is 175. 1918 is 202. 1919, 213. 1920, 211. 1921, 125. 1922, 132. 1923, 142. 1924, 143. 1925, 156. 1926, 145. 1927, 139. 1928, 149. 1929, 146. 1930, 126. 1931, 87. 1932, 65. 1933, 70. 1934, 90. The 1935 figure is not yet out. The corresponding figures for California for October and November, 1935, were 109 and 108.

If I assume that the lands paid, without going delinquent, for the year 1925-1926, for a million and a half, I would not say that no part of it was yielded net by the lands, but I don't think that much was yielded by the lands. It represents investments put in by outside sources, in a considerable part. [377]

At page 75 of my report, at the bottom of the page is found the statement: "The report here presented will appear, to most readers, a very dark picture . . . It is now nearly impossible to sell the foreclosed farms at anything approaching the amounts originally loaned on them." Those conditions were certainly present in the Merced Irrigation District, and it was practically impossible to sell foreclosed lands in that area; more difficult there, even, than in other parts of the country.

(Testimony of Dr. Murray R. Benedict.)

We made no assumption relevant to the fact that a very substantial amount of the sums that had been paid on Irrigation District taxes had been advanced by holders of mortgages and deeds of trust on the lands within the district, but I think the records show that there was considerable of that occurring. Of course, advances of that kind, that would be made by the holder of a deed of trust, would depend on whether he expected to get out some such amount later. In a good many instances where money had been loaned upon land, the lender chose not to pay the District taxes and preferred to let their investment go. However, I have no statistical record of them in this report.

The condition as regards mortgage indebtedness was not one of the factors that we took into consideration in the determining of the capacity of this land to meet Irrigation District taxes, because the other obligations would have to be met by the individual before we would have a value in the land on which he could support a mortgage. We undertook to judge the capacity of the land to pay by the productive capacity of the land itself, and considered that those collateral means of meeting these taxes had been practically exhausted.

Q. Now, at the bottom of page 108, and the top [378] of page 109, you state,

“If we assume the average debt for the farms on which information as to debts was given to be applicable to the entire 1463, the

(Testimony of Dr. Murray R. Benedict.)

following figures give a rough approximation of the total amounts owed by these farms as first mortgages and as second and chattel mortgages." Then follows: "Estimated total of first and second mortgages for the 1436 farms of 20 acres and over (excluding rice and pasture farms), \$4,501,456.00."

How were you able to carry that out in this figure? What was the basis of your estimate? What was the data that you got whereby you made a computation that resulted in those odd figures?

A. It was simply extending to the whole universe the average figure for the sample.

Now, the accuracy of the total depends on how good the sample was. This, of course, was not as carefully drawn a sample as the one used in the main part of the study, because it is more difficult to get information concerning a mortgage deed than it is to get these other types of information.

Q. It was perfectly easy to check up, was it not?

A. Yes, sir.

Q. The local banks held a good many of these mortgages and deeds of trust, and the other lending institutions in and about the District, did they not?

A. That could have been secured. As a matter of fact, it was somewhat of an afterthought

(Testimony of Dr. Murray R. Benedict.)

in the study. The negotiating group asked for some information concerning that. We had secured it in the survey on quite a large number of the records and simply brought together what information we could in a short time concerning that. To go directly into the original records for an area as large as that would probably have delayed the matter for another two or three months. It would be quite a task. . . . [379]

Q. Who particularly was it that inquired and asked for some information on this subject of loans on lands in the District secured by mortgages and deeds of trust?

A. I don't believe I can give you that at this time.

Q. At what stage of this investigation was the obtaining of that information suggested, if suggested?

A. In the course of the study we were in rather constant touch with the various members of the fact-finding committee, including Mr. Cone, Mr. Shaffer, Mr. Thelen, Mr. Fullerton, and Mr. Underhill; and as these various problems were discussed, certain types of information seemed pertinent, and where possible we got those. If they did not relate directly to the main study, they have for the most part been put into these various appendices to the main report.

(Testimony of Dr. Murray R. Benedict.)

The county tax shown in the report is the total tax collected through the office of the county tax collector. There was no segregation made for the purpose of showing the taxes in different bonded Districts. I did not, in judging the capacity of these lands to pay, take into consideration that all that land in that District was bonded with other bonded indebtedness, payable by the levy of taxes upon an ad valorem basis. I knew there was some indebtedness of that kind, but I did not make sufficient investigation of it to say that all land was covered by that. The county engineer did considerable work on the overlying bonded indebtedness. He did not supply me with his report.

We relied on the Cone-Underhill survey as a basis for the classification of the character of the soils throughout the District. The Cone-Underhill report was published by the District in the same cover as my report. [380]

On pages 14 and 15 of the report there is a gross tabulation of land within this District that was highly improved, that was planted to orchard, that was planted to vineyards, and that was planted to alfalfa—that is, the acreage.

There were quite a good many developed dairy farms in the area; I wouldn't say highly developed. They have not the necessity there for quite the type of buildings and equipment that some parts of the country would need in the dairy industry.

(Testimony of Dr. Murray R. Benedict.)

There is a table on page 12, indicating the bearing and non-bearing acreage for each of the principal tree and vine crops.

The acreage in almonds, apricots and peaches constituting bearing orchards within the Merced Irrigation District, was in 1932, roughly, 11,000 acres. This was bearing as distinguished from non-bearing.

In 1932 there were only about 600 acres of new plantings of deciduous fruits, presumably planted less than five years. There was about 9,500 acres of figs in 1932; also about 1,000 acres of olives and walnuts.

These plantings were not in the main by large corporate holdings. The California Packing Corporation orchard consists of between three and four thousand acres, mostly in peaches.

I noticed that most of the orchards that were in production were planted on the better lands. There were fairly substantial acreages of deteriorating trees on lands where they should not have been planted in the first place. That amount was probably offset by the trees that were coming on, the new plantings.

I did not depend on my own judgment in estimating the fair market value of the lands of the District. I got the best judgments I could get from a considerable number of people of [381] long experience in the state, including quite a number of specialists at the University, and quite a good

(Testimony of Dr. Murray R. Benedict.)

many talks with people in the District, where they had record of the costs of establishing orchards.

I do not know of direct knowledge that good peach orchards are today receiving offers of \$350.00 an acre. It may be true.

Q. Well, the fluctuation would be above \$350.00 an acre, not below that, for a fully developed peach orchard in prime condition?

A. There is a showing in the report of the costs which we used. I have not referred to that for some time. That states as follows: "The average peach orchard will carry itself, under usual conditions, in the fifth year. The useful life of the tree is about 15 years." I am reading from page 86. "To compute depreciation, regard inputs to orchards under five years old as capital investment; that is, show both as expense and increased value of the land. For orchards of five years or over, figure cost at five years to be \$225.00 per acre. Charge off one-fifteenth of this each year for the next 15 years."

Now, that is the basis we used in this study—estimating the cost of establishing peach orchards at about \$225.00 per acre. That is the cost of bringing the peach trees to bearing, independently of the value of the land. These investments have been made by these various companies and individuals that owned the 11,000 acres of land.

(Testimony of Dr. Murray R. Benedict.)

There is not very definite data available concerning the market value of orchards, deciduous fruits—market value per acre, running back as far as 1910. It varies a great deal, depending upon the yielding power of the trees, and the quality of the yield. It is a rather speculative type of industry. On [382] page 12 you will find the acreages for the county given from 1927 to 1932, inclusive. Now, those are not quite directly applicable to the District, but almost all of the plantings of this type are in the District.

Now, with respect to alfalfa, the total acreage as shown by the ditch-tenders' survey in 1932, was 18,377, and I think that is about correct; a very accurate determination. The extent of improvements, such as the leveling and the installation of pipes or the laying out of ditches for its irrigation, varied considerably on different places. Of course this would not necessarily involve the laying of pipes. I think as a rule that is not done for the general field crops like alfalfa. It had been done some in the orchards. All of this alfalfa land had ordinarily had at least a rough leveling. Some of it was not in very good shape. Of this land quite a lot of it was adapted to the raising of alfalfa, and some of it was not.

The life of the alfalfa plantings has apparently been declining rather rapidly there in recent years. They have been having more and more difficulty from certain types of fungus disease that shortens

(Testimony of Dr. Murray R. Benedict.)

the life of the plant. There was a great deal of discussion about that problem in setting up our rates of depreciation. I think we spent a number of meetings with specialists of the College of Agriculture attempting to arrive at conclusions, and the final result of those discussions was that in a cycle of eight years—this is taken from page 87—you can figure on four full crops, and one or two part crops, the other two years being those in which other crops are grown.

The additional land outside of that planted to orchards and to alfalfa, is broken down much more completely than classed as grain land and as rice land. There is a complete record of the uses to which the land is put on pages 14 and 15 of the report. I think there would be as many as four or five thousand acres devoted to truck crops. That is a somewhat unstable type of farming; that is, a great deal of it is carried on by renters. They rent in one area for a year or two or three, and maybe move to some other piece of land. [383]

All of this land that I mention, the orchards, the alfalfa land, and the truck farming land, had to be leveled so as to adapt it to irrigation—at least some leveling. That in itself costs about \$30 an acre. It depends on the conditions that they found. Naturally, some land, of course, is more expensive than other land to level.

In 1929, 6,351 acres had been growing rice. In 1930, 596 acres. In 1931, 1,876 acres. That is a type

(Testimony of Dr. Murray R. Benedict.)

of production that varies a good deal with the price of rice. That land was all adapted to the growing of rice, although there were some changes in District policy which affected that at about this time—the zoning out of certain lands against rice because of the damage to other lands from seepage.

Judging from the table on page 15, of that general type of land there was apparently 49,729 acres used for grazing—land on which no crops had been planted. It is my impression that most of this land had never been in crop, or a great deal of it, at any rate.

There practically is not any such thing as a typical period. 1929, 1930 and 1931 were the last three years preceding the time at which we undertook to get this information, and about the only three years that were available to us. Also, it did cover and show the transition that had occurred during that period.

In 1932 there was 19,205 acres in all classes of grapes in the County; for the District the figure we have gives 13,845 acres. Apparently practically all of them were producing. [384] The 1932 figure for the county gives only 41 acres non-bearing. The figures given for the District, which figures were taken from Mr. Dooley Wheeler's figures—the agricultural commissioner—shows that 3,650 acres were in wine grapes, and 4,240 in table grapes, and 5,955 in raisin grapes. That is the year 1932. For the most part I presume that those vineyards were

(Testimony of Dr. Murray R. Benedict.)

all planted on soil adapted to the raising of vines. There are considerable exceptions to that, and one can see quite considerable acreages in going through the District where vines have been abandoned.

In determining the capacity of these lands to pay the Irrigation District taxes, we specifically left out the revenues derived from the sale of power. It is an engineering problem and is not one of determining the ability of the lands to earn or to pay. That is a much more definite thing than the other sort of information, and our study was directed specifically at the earnings and expenses on the farm lands.

Cross Examination

By Mr. Cook:

The Witness: In my study and attempting to determine the ability of the land to pay, where a man was farming and had certain other sources of income from business carried on on that farm, or from his labor for work he may do, that is included in the income shown. It does not include any income from any outside investments that he might have, but if he was doing some work off the farm, or if he had some particular kind of business that he carried on right there, that income was included.

We did not make a specific study of the Merced City situation. I think there is some information

(Testimony of Dr. Murray R. Benedict.)
concerning that in one of the appendixes. The assessed value in the cities, and incorporated towns, is not a very large part of the total assessed values. You will find some consideration of that [385] on page 103. Your rural property in the District, the assessed value was \$18,006,195, and the total for all lands in the District was \$20,246,775.00. That is about \$2,000,000 for the lands in the cities. About one-ninth of the assessments of the District, apparently, must be carried, borne, by the cities.

Of course, in that assessed value, you considered the fact that this was merely an assessment upon the land and not upon the buildings in the City of Merced, but that as a matter of fact the buildings and businesses and enterprises conducted there do enter into the ability of the city to pay its taxes.

In my report all income from dairy industry—cattle production—and the like, is included for the farms in the survey. Merced county has quite an amount of live stock, although quite a lot of that is outside the District—that is, the beef cattle phase of it. The cattle industry within the District is pretty largely dairy, except for some of the poorer lands in the outlying parts of the District.

In my calculation I did not consider the farm as a social factor—that is, as the home of the citizen; the study was directed to finding what amounts of money were available to carry these various obligations.

(Testimony of Dr. Murray R. Benedict.)

In the cost of production that I calculated, the principal items included were: The various cash operating expenses such as seed and spray materials, gasoline and oil, and feed purchases and things of that kind in the one class; labor used in the second class; the taxes paid for the other governmental units; and the depreciation. There is another item which is important on many of the farms, but was not taken into account here, and that is, of course, the amount of interest that they actually paid or were paying on private obligations owed. The reason that was not included is because costs of that type, if they are not paid, do not necessarily throw land out of production, [386] they result in transfer of ownership to someone else. We were endeavoring to show those taxes or costs which would actually have an effect of throwing land out of production.

I did not include the irrigation assessments in my cost of production. The study was designed to reflect the amount of money that would be left out of which to make payments of that kind.

I regarded the county tax as one which must be paid, for we were trying to see what expenses would have to be met if people were going to stay in that area and continue to farm it; and if school systems break down and their government breaks down, of course they wouldn't stay there. That results practically in the necessity for meeting those expenses.

(Testimony of Dr. Murray R. Benedict.)

I regard the reclamation of arid land and the development of irrigation systems a less essential governmental function than the school system, the police, highways and roads, because these other functions were carried on before the District was formed. Now, when you have the District formed and the irrigation enterprises established, there is, of course, quite a lot of land that couldn't be operated in the way that it is now operated if they did not have this irrigation service.

I have not computed in my report the relationship of the bond debt service to the total cost of production. One reason why we did not include it is that we wanted the report to reflect the picture as accurately as possible, and these costs vary a great deal from farm to farm. For example, if you will refer to page 35 of the report for lands in class 1, which refers to the third column from the left, the total costs A-B-C-D per acre varies from \$11.35 up to \$143.30. If it is the operation of grain land, costs are not very high. If it is operation of a highly developed peach orchard or fig orchard, it may be up in [387] the higher range there; and an average figure is apt not to show that situation very clearly. That was the reason for presenting the graphs shown on pages 68 and 69, which reflect those more accurately. And it is also true that the higher costs may not necessarily represent losses or low net incomes. They are in some cases accompanied by proportionately higher returns, perhaps

(Testimony of Dr. Murray R. Benedict.)

more than proportionately higher; and the thing that really tells the story is the net between those costs and the incomes, and that is the thing on which we endeavored to focus attention.

It is my opinion that the entire elimination of bond service charge would not have enabled the Merced Irrigation District people to show a profit in the years under consideration. It is probable that with some period of readjustment there would be changes there that would improve the situation somewhat over what it was at that time. The costs tend to fall down more slowly than do prices in a declining price period. It is not alone the bonded debt which caused the distress, but that was the largest single item involved.

For some little time it was virtually impossible to secure loans in the District, because of the unsettled status of the conditions there. I think about a year or a year and a half ago, the Federal Farm Credit Administration began to make a few loans of what is known as the commissioner's loan type, which is more in the nature of an emergency loan than the ordinary land bank loan. I have been told—I don't know this at first hand—that they are now making a few loans of the ordinary land bank type. I do not know the extent of either of these types of loans. These mortgages are principally held by insurance companies, some by commercial banks, and some by other types of banking institu-

(Testimony of Dr. Murray R. Benedict.)

tions. Some are held by the Bank of America, but I do not know to what proportion or quantity.

[388]

Q. In your report, Doctor, on page 10, you have set forth conclusions drawn by Mr. Wells A. Hutchins of the United States Bureau of Agricultural Engineering, which you state is the result of a study of 37 irrigation projects that had defaulted in their bonds; and I take it that your including that report is somewhat with approval of what he has to say, and I wish to refer you to the statement from Mr. Wells A. Hutchins' report to which you refer, which is United States Department of Agriculture Circular No. 72, "Financial Settlements of Defaulting Irrigation Enterprises, United States Government Printing Offices, Washington, 1929," reading as follows: "Participation of existing farm mortgages is practically indispensable to a satisfactory settlement if, as is so often the case, farm mortgages are common; for a settlement by bondholders alone, purporting to be based upon productive power of the lands, but ignoring such mortgages, may be wholly nullified by continued presence of heavy private farm debts. From the mortgagees' own standpoint, their security is bound to be affected by the outcome of a general refinancing plan, and if the project is a district, their lien is subordinate to the as-

(Testimony of Dr. Murray R. Benedict.)

assessment lien and may be wiped out as a result of tax sale. Consequently, it behooves them to assist in every way possible in making the reorganization a success, even to writing off material portions of their own mortgage principal. Such concessions may measure the difference between success and failure of the plan, and in any event are far better for the mortgagees than the total or almost total loss of security which may follow failure to adjust all debts on a practicable basis."

Q. In your view, Dr. Benedict, would you consider the participation of the mortgage liens in this proceeding as one of the elements that should be considered, and as one of the obligations against the land which should be affected and scaled down in a proceeding of this character? [389]

The Court: Just a moment. The question, in effect, is whether or not the holders of mortgages should not also participate in this reduction. Now then, you can express your view on that. In other words, according to Mr. Cook's position, we are singling out the non-consenting bondholders here, and we are proposing to reduce them in the same degree as those who consent. But this is merely one of the obligations of the District, the same as school bonds, same as county bonds, or improvement bonds for various districts that might exist. Of

(Testimony of Dr. Murray R. Benedict.)

course, the nature is a little bit different from a mortgage, which is a personal act, individual act, of the landowner. But I think the question is one I would like to have your view on.

The Witness: The answer is "No," but it requires an explanation, your Honor.

The Court: Well, now, go right ahead and explain.

The Witness: That explanation is given more fully on page 28 of the report. All obligations are valid, it seems to me, if there is means of paying them. Tax assessments are related to the quality of the land and are supposedly uniform for a given quality of land. We have, however, considerable variation in the ability of different farmers farming the same kind of land. Some of those men on class 1 land will make profits; some will not; some will make losses. Obligations in the nature of personal loans which are owned by the superior farmers who can make some money on the land and can pay them, would not necessarily be scaled down nor would their scaling down be of any direct benefit to the bondholders. The bondholder depends on a uniform assessment on a given quality of land. On the other hand, there have been considerable scale downs of personal loans or bank loans where the individuals were not able to pay them, and where the property was not of sufficient value to satisfy the mortgage. [390]

(Testimony of Dr. Murray R. Benedict.)

Q. Do you not apprehend that if the bonds, which are a lien superior to the mortgages, are thus reduced, that the benefit will redound almost entirely to the benefit of the mortgage holders and not the farmers—if they are not compelled to scale down in proportion to consideration of the fact that they have a genuine incumbrance?

A. I would say no; but again, there is need for an explanation. Of course, not all farms are mortgaged. I do not know, and my report does not show, what proportion of the farms are mortgaged.

The Giannini Foundation was set up in 1928, and this was the first study of this type that was asked for after the foundation began to function. There have been studies of somewhat similar nature by various individuals connected in one way and another with the College of Agriculture prior to that time.

The cost of this report was not computed. The University paid most of the costs with the exception that the District agreed to pay for the field help which I might select for getting the field records. That involved four or five people for a period of two or three months.

Mr. Fullerton did not participate in making the survey. He attended the earlier sessions of the fact-finding committee, and went over the plans for the study. The plan of procedure and report had his approval.

(Testimony of Dr. Murray R. Benedict.)

Mr. Underhill did not participate in the survey in this phase of the field. He worked with Mr. Cone on the classification of lands. He was employed by the Bondholders' Protective Committee. I don't know whether he was paid by them.

The first requests for making the report came from representatives of the farmers of the District—two or three resolutions; one from the County Farm Bureau, one of the District Board, one I think from the Board of Supervisors of the County, [391] and later Mr. Keplinger joined in that request. The comment was made that Mr. Keplinger stated to me that the Bondholders' Protective Committee did not wish to participate in the making of this survey, but merely would act in the capacity of observing, and they asked that Mr. Fullerton and Mr. Underhill be their representatives as observers rather than as specific members of the committee. I do not know what Mr. Keplinger's occupation was at that time.

Cross Examination

By Mr. Childers:

The Witness: These particular studies were made at a time when agricultural prices were very low, although I don't think we could say an all time low. However, the status in 1932 and 1933, the general index of agricultural prices was the lowest it had been since at least as far back as 1909. At the time my report was made, from June, 1932, to

(Testimony of Dr. Murray R. Benedict.)

sometime in 1933, and for a year or two back of that, and for all times since, business has been going through a serious depression.

In 1932 I wouldn't say conditions were fairly good for this particular District. This, because the District was comparatively young, it had been started, the expenditures made, in a period of relatively high prices, and there was apparently an over-optimism as to the extent of development that might be expected in the near future. There is some question as to whether the District is continuing to develop. The table shown on page 12—Table 1 of the report—shows some downward trend in acreage of nearly all of the intensive crops, which carries an implication that development is not proceeding.

If general economic and farming conditions come back, in fairly good condition in the next few years, I still would not expect these large holdings to be broken up more or [392] less, and additional development take place in this District, because there has been a very pronounced change in the general situation affecting a great many of the California specialty crops and many of the major fruits of the United States, growing out of, in large part, a sharply reversed world situation. Many of these products depend to some extent on export markets, and those markets have been very sharply curtailed in recent years, and there is no present indication of very much improvement for a considerable time to come.

(Testimony of Dr. Murray R. Benedict.)

All business, including agriculture, has improved somewhat since 1933. If we assume that agriculture and other business conditions come back to a condition similar to 1910-1914, or any other period, we may select, materially above what it is now, many of the indications of my report would still apply. The best estimates that the United States Department of Agriculture has been able to make are that, without some form of curtailment in many lines of production, that we must squeeze out of production variously estimated amounts of land—from 25 to 50 million acres in the United States; that is bound to be a depressing influence for a very considerable time, possibly 10 to 20 years, if that is the procedure which results. The agricultural adjustment program was, of course, designed to ease that transition. That has been eliminated, for the present, at least. What future developments will be is very difficult to determine at this time.

It is my opinion there is no prospect of a sharp rise in agricultural prices. By a sharp rise I mean such an increase as we had during the period from 1915 to 1919; during war conditions. I would expect a rise equal to the 1930 prices. I do not think it would go above that. I do not think this District is as productive a district as some further up the valley—Turlock and Modesto. Long continued development does improve a community. [393]

It is my understanding that the Merced District has a good water supply, although it was short in 1931.

(Testimony of Dr. Murray R. Benedict.)

I suppose the item of labor, which if deducted from the farmer's costs, would affect his operation just as much as the particular cost of bond service, but the farms wouldn't be operated if the labor were not performed. Neither would they be operated if they didn't have the water. It is not particularly irrigation district cost or bond service that is breaking the farmer more than any other item of a similar amount, except that there seem to me to be a difference in the necessity of certain types of things for continued operation of land.

It is not as important to scale down private debts as it is to scale down public debts. If the district debt is not put into manageable form, you would get it pyramided, which would eventually put all the lands into the hands of the District, resulting in non-operation of considerable parts of it. In the case of private debts, if they are not met, the person who owes the debt loses control of the property, but it goes into some other private hands, and that does not necessarily mean that it will be taken out of production. In the private debts, one farmer is not dependent upon what another farmer does. In the district debt he is. In other words, the individual farmer would be the only one that would suffer, and not the community. Of course, the community does suffer if there is any very large scale transfer of property through foreclosure.

(Testimony of Dr. Murray R. Benedict.)

I regard the family labor as a proper item of cost when determining the ability of the lands to pay. It is not comparable to the labor of an owner or operator of a small business that is not making a profit. The small farmer has little in the way of resources that he can draw on. There probably is some similarity, but in a given community there are not enough small business men to have the same effect on the situation. [394]

The less developed districts could be expected to have a higher cost of operation than a district well established, and fully developed. I do not know enough about the Turlock District to give a comparative ratio.

Cross Examination

Q. By Mr. tum Suden:

The Witness: On pages 68 and 69, the graphs represent all of the farmers operating on the given classes of land. You will note that you have a certain small group which drop down very low and have a rather large minus return per acre; and also over at the right, a group which come up very high. It was our feeling that the more or less level section of that graph would represent the mass of farmers—about the average sort of man and what he could be expected to do. This was a somewhat arbitrary classification, although it has a very good foundation in economic theory. The particular difficulties

(Testimony of Dr. Murray R. Benedict.)

that the man might have, such as illness or any other obstacle that may have occurred and prevented his having a successful showing on his ranch, is usually reflected in those extremes at the left of the graph. No other attempt was made to pass upon the particular ability of the farmer himself to farm the land in question.

The method used in selecting the parcels of land from which the report was made, is the nearest way known for getting a representative sample. Representative samples are purely chance. We used about a 17 or 18 per cent sample which is regarded as very good by most statisticians. Our sample was large enough so that personal ability of the various farmers would average out. There is no definite measure of personal ability except in results. Thus we took into consideration the variations in ability of the various farmers only by using such a large sample that by the method of averages (by drawing from a [395] hat) the variations would average out.

Cross Examination

Q. By Mr. Haynes:

The Witness:

Of the 300 farms used in the sample, not all were in production. I do not know the actual proportion, but they were drawn with the view in mind of getting the same proportion of non-operated farms as actually existed in the District.

(Testimony of Dr. Murray R. Benedict.)

In our table there are some farms, let us say of 40 acres, with an income figured on the basis of 40 acres, of which only 20 acres were actually in production. It is because of abnormal situations like this that we took the middle half of the array. It was the usual situation that where part of the land was laying idle, it was owned by non-residents of the District, and our reports almost entirely are from land owned by residents of the District, so that the books and records were available to us.

In our statistical system we struck out the top 25 per cent, and the bottom 25 per cent, and took the middle. The 25 per cent represent in number of farms, not in number of acres. Thus it is possible that the middle 50 per cent is not the middle 50 per cent in number of acres in the 100 per cent of farms picked out of the hat, although there is nothing in the situation that would indicate that it wouldn't be, on the theory of probability.

There are various reasons that may have caused the lands in the lower 25 per cent to be in that particular class. Illness or something of that kind, the acreage may not yet have come into production, or it may be going out of production. He may have just pulled out an area of peach trees or something of that kind. [396]

Usually the reason the upper class of 25 per cent is in the upper class is, because they have better land, or it is farmed better, unless there is some outside source of income.

(Testimony of Dr. Murray R. Benedict.)

Primarily, the lower 25 per cent represent unusual cases due to sickness and that kind of thing, or non-production; whereas the top 25 per cent represents primarily unusually good lands or unusually good operation.

Q. Now, that being true, I suggest to you that you do not get a real average at all when you take the middle. The bottom is not typical in any sense and should be excluded; the top, however, it seems to me, simply differs only in degree from the middle, whereas the bottom one is not only in degree, but in kind.

A. Except that there is no way of absorbing that larger amount of income in taxes. The tax under the law must be applied universally to a given quality of land. Therefore, if you get a tax up where it would still be within the ability of those few at the right to pay, you would have it above what the large mass of operators through the middle of the array could pay.

Q. The result, however, is not an average of income of productive land, but an average of income of productive and unproductive land, weighed somewhat by the circumstance that you are not going to take account of very large income?

A. As a matter of fact, we did compute the average for the entire group. It is very near the same figure as the average for the middle. That also includes the unproductive lands.

(Testimony of Dr. Murray R. Benedict.)

The non-bearing acreage was not large and not a very important item. There was a considerable amount of land in crops for which that land was not suited. That had something to do with the situation.

Further Cross Examination

Q. By Mr. Clark:

A. In my opinion, and I think it is a fair conclusion from what I have incorporated in my report, that cutting this bond debt in two would improve some the chance that mortgage debts would be paid. It would improve it as to all the lands. A uniform reduction in mortgage debts would not effect a corresponding increase in ability to pay District obligations. Mortgages tend to be more plentiful on the better lands in all parts of the country.

Cross Examination

Q. By Mr. Hooey:

In my report, labor was a very important item, considering the costs of production to the farmer or land owner. It seems reasonable that the family labor would constitute approximately one-half or the total labor. We figured the family labor on the basis of what it would have cost, if hired. Practically speaking, the farm does not pay anything for family labor. The effect of the allowance or computation of family labor would be to give that much

(Testimony of Dr. Murray R. Benedict.)

money to the farmer in the aggregate. Out of that he must support his family.

The middle half of the array, of which we have been speaking, was the middle 50 per cent of the 299 farms selected.

In selecting these 299 farms we eliminated as the beginning all farms less than 20 acres. This comprised about 1100 farms. There were about 1600 or 1700 farms of 20 acres or over. We felt that the major question of the ability to carry the District obligations would rest on the larger properties. That is shown to be true by the figures as to delinquencies shown on page 103 of the report, which shows very much heavier [398] delinquency for the larger properties. Now, we simply decided that some 300 farms out of a little less than 1700, would be an adequate and dependable sample, and we drew that many farms to get records from. The 299 is the whole sample. The report shows how many of each type of farm was included in the 299.

A farmer is usually a debtor, in this respect: When he makes money he pays down his debts or he expands his operations. When he does not make money he usually borrows, if he can. He does not usually set aside money for a rainy day, so to speak.

My report contains some information as to the amount of mortgages on the land in the District. When I commenced making the report I was aware that there was some controversial matter existing

(Testimony of Dr. Murray R. Benedict.)

between different interests in the District. I also knew that it was the intention of the District to refund the bond issue. I had the general knowledge that the Bank of America—without stating the amount—was mortgagee on considerable of the land of the District. Mr. Keplinger was one of the men who solicited my help in compiling this report. He came to me as chairman of the Bondholders' Protective Committee, but I did not know at that time he was connected with the Bank of America.

In the years covered in my report, the year of 1929 was the only year that production costs were less than the receipts of the land, and that year the farmer made \$2.83 an acre. I have not computed in my report of cost to the farmer, the amount of the Irrigation tax. I have eliminated that altogether. Thus, as an average, he would not have made enough in that year to pay the tax.

Had this survey been made back in 1919, and the survey showed what it did at this other time, I would feel that the formation of this District of improvement, the building of the [399] dam, the storage of the water, was an impractical proposition.

It is true, I think, that costs are being somewhat reduced from what they were in the period when this survey was made. Costs move down somewhat more slowly than prices of products do. It will depend upon this condition whether or not the new bonds will be as much a failure as the old ones.

(Testimony of Gustave Momberg.)

Petitioner's Exhibit No. 35 is the so-called "Benedict Report" being a printed booklet of 133 pages and true and correct copies are furnished in lieu of printing any portion of said report in the Appendix.

GUSTAVE MOMBERG,

called as a witness on behalf of petitioner, being first duly sworn, testified as follows:

I am district manager for the California Lands Inc. at Merced, and have been associated with California Lands at Merced since February 15, 1929. California Lands operate properties which have been foreclosed upon by various subsidiaries of the Transamerica Corporation. These properties are leased and a few of them are operated.

I graduated from high school in 1917; went to Western College of the Pacific three years, non-degree work at the College of Agriculture, Davis, graduating from there in 1921. From 1921 to 1929 I held various jobs varying from baling hay to operating packing plants and employing as high as 150 people. Part of this time I was in business for myself. These [400] various operations took me from Imperial Valley up to Mendocino county. Farming, processing, packing, selling and inspection of farm materials. In 1929 I went to work as the superintendent for all the properties in the district. There

(Testimony of Gustave Momberg.)

were 110 properties under my supervision at that time composed of an acreage of about 14,000. That was in the County of Merced, and about 6,000 acres were in the Merced Irrigation District. The number of properties under my supervision increased from 1929 on up to 1935 when we had a total of 248 properties in Merced County. I could not say definitely how many were in the Merced Irrigation District in 1935 but it was around 90 because there were 99 in 1933 and there were 94 in 1938 and it had not changed much during that period. At the present time the farms that we handle vary in size from 10 acres to 22,000. In crops we have everything from pasture to truck crop—fruit crop, peanuts, alfalfa, beans, corn, dairy set-up, various kinds of fruit, figs, olives, almonds, peaches, grapes, plums, pears—about all the crops that are grown in the San Joaquin valley. I would say that that property we have in the irrigation district was fairly representative of all the properties we had in our district. There were poor properties and good properties, adobe areas and sandy areas, shallow soils and good soils and on the creeks and out of the creeks. They are scattered generally throughout the Merced Irrigation District, commencing on the east and ending on the west, and on the north and on the south.

At the present time we are operating and leasing 94 properties in the Merced Irrigation District and are supervising at the present time 185 in all of

(Testimony of Gustave Momberg.)

Merced County, Mariposa County and all of Stanislaus County south of the Tuolumne River. It includes some farms in Turlock Irrigation District. We generally operate such properties as involves too much expense for the average tenant to handle; that require knowledge and a technique that the average tenant doesn't have. We operate a few of those ourselves and the balance are leased on shares and a few of them are leased on a [401] cash basis. In the case of non-perishables the tenant delivers the entire crop to the warehouse and our share is divided at the warehouse and we sell our share and the tenant sells his. In the case of perishable products such as fruits, grapes, sweet potatoes, etc., we exercise a supervision over the delivery and sale of those products and collect the money and distribute it to the tenant. We keep all of the records and returns from these properties under our supervision and I am thoroughly familiar personally with each and every one of these properties. I have superintendents working under me. I have kept records of the income and expenses upon those farms lying within the Merced Irrigation District operated in the manner indicated for the year 1937.

For the purpose of comparison I took 50 that we had in 1932-33 and the 50 that we had at the end of 1933 are the same today. In other words, I am giving the Court a comparison of an identical operation on 50 properties scattered as indicated and

(Testimony of Gustave Momberg.)

diversified as indicated in the Merced Irrigation District in 1932-33 and 1937-38 and they were under the same management and supervision. On these 50 properties for the year 1933 the gross income was \$36,301. The operating expense, which included working foremen on the property but not including the district's office and supervision expense, was \$15,469. The taxes that year were \$13,841. In the second half of that year we were not paying taxes on 16 of those properties. That made a net operating profit, not including interest, depreciation, insurance and supervision, of \$6,999. A gross operating profit not including depreciation, interest on investments, insurance or district or head office supervision. That was the net profit. That does not include taxes on a part of the properties for a half year because the taxes were so high we couldn't afford to pay them. I estimated those taxes, [402] had they been paid, would have been around \$3,000 in addition to the \$15,000 expense. We paid the spring taxes of 1933. At the time we did not know there would be a reduction in taxes, so we just decided to quit paying taxes on about a third of our property, 16 of which were in this group. The comparison would be worse if you consider the taxes that we might have paid but didn't. We redeemed some of them but some of them we did not. At that time the 1933 crop was produced during the winter and spring with labor being paid 17½¢ an hour. We re-

(Testimony of Gustave Momberg.)

deemed all of the properties in 1935. However, we quit paying taxes on a few more this year. We still have possession of all of those 50 properties. In 1937 those same properties grossed \$59,989. The expense was \$24,736; the taxes were \$13,000 and the net was about 22,000 odd dollars. The net operating income would be \$22,253 exclusive of interest, depreciation, insurance and supervision.

In 1933 when it was decided to put in the taxes of the property that I had not included the first time that would make a net operating profit of \$4,032 instead of \$6,990. That profit would be a gross profit. In other words, the gross profit would mean the profit exclusive of the items of depreciation, interest, insurance, etc., and my own salary and items of that kind.

I do not have the records of this particular group of 50 properties up to date. However, I have the records of the entire district for 1937-1938 and our income up to date for this year is 60% of what it was in 1937 and within that 60% is included the 50 properties that I have traced through. If we take 60% of the income we had in 1937 on this group which would be a fair estimate inasmuch as all of the other properties in the district are only taking 60% as the figure, that would bring a total estimated income for 1938 of \$36,000. Assuming that the [403] income up to date was 60% of 1937 we would just assume that the income at the end of the

(Testimony of Gustave Momberg.)

year would still be the same as 1937. Up to November 1st it was 60% of last year. Therefore, it would be only 60% of the total for 1937. It is 60% of what we collected up to that period last year. Therefore, if you take a gross income in 1937 on those 50 properties it is \$59,989. The estimated net income for those same properties would be very close to \$36,000 in 1938. It was \$36,301 in 1933. In other words, the 1938 income will be substantially the same as the 1933 income. However, the expenses will be about \$7,000 higher, mainly for the reason that in 1933 the crop was grown with 171½c labor and harvested with 20c labor but in 1938 it was 35c labor for production and 30c labor for harvesting. There are in that group the three properties which we operate. The operating expenses on that group of properties will be about \$22,000. That is on the whole 50 properties, because we furnish fertilizer, of course, and various other things. Every ranch has expenses every year in operating, and we take care of that ourselves; that is, it is under our supervision. In my experience the gross returns from any group of commodities on the average is about 20% to 25% less this year than in 1937. They were a little bit higher in 1937 and in 1938 than they were in 1933 but not very much. The income dropped 40% but the difference is accounted for by the fact that the quality of production was poorer this

(Testimony of Gustave Momberg.)

year and the quantity of production was poorer. We had a reduction in crops as well as in price. The income in 1938 has been reduced over 1937 by about 40% and the income in 1938 as compared with 1933 is about the same.

I am familiar with the general conditions in the Merced Irrigation District from the standpoint of soil conditions and also the condition of the irrigation system. The [404] Johnson grass problem has been getting constantly worse year after year. Thousands of acres now are so badly infested with Johnson grass that it is unprofitable to raise crops on that. Some of the land is too heavy to raise alfalfa on, so it has to go into permanent pasture because there is no other use for it; and that is not the only weed that is raising the cost production in that district. We have the Bermuda grass and the puncture vine and the sand burs. It is becoming the practice of the good farmers not to attempt to cultivate that type of land and at least 20% of their land is not in production. In other words, they can farm it for four years and then they have to clean it up the fifth year or if they want to they can clean up 20% a year. In other words, there is about 20% of the acreage that doesn't produce a profit on account of the weeds. In the case of Johnson grass alone they still raise some alfalfa on the better land.

The Merced Irrigation District has been kept up as well as possible with the money they have had available to do so. However, it is away be-

(Testimony of Gustave Momberg.)

hind in the amount of work that is necessary to be done to put their plants in shape.

The last answer was objected to on the ground that no foundation was laid and the respondents moved to strike. The objection was overruled and the motion denied.

The Witness: Some of these 50 parcels have dairies on them. The dairyman has had the best chance in the last few years because his prices haven't dropped as much and also because of the fact that he has livestock on his property that enables him to use a good deal of the poorer land and get some value out of his poorer land. The county has had a bad reputation with cows having considerable T. B. They have finally started to clean that up but they haven't finished it yet. There has been a considerable movement on the [405] part of the state and governmental authorities to destroy herds on that account but there is a compensation that the dairyman gets as a whole on account of the low prices for replacement of stock so that it has not hurt him very much.

Up to 1935 the district had the water table situation pretty well controlled. They were making constant improvements digging new drainage wells and canals and lining ditches. In 1934, it being a dry year, they made a good showing but in 1935, 1936 and 1937 with the rainfall above normal it put the ground water table up again and they have

(Testimony of Gustave Momberg.)

not been able to keep up with the drainage facilities during these wet years.

Twelve of our properties were quitclaimed to the irrigation district in the last two years and there are eight under consideration now. In those 12 properties there are approximately 1,000 acres. They are shallow and sandy lands. There are about 500 acres in the eight parcels which we are now considering quitclaiming to the district.

Cross Examination

We have about 40 properties located in Stanislaus County and within Turlock Irrigation District. I only took over the properties in Turlock Irrigation district last year. The records on these properties are probably in our office in Stockton. I didn't have the properties in 1932 and 1933 so I don't know what these properties in Turlock were doing in 1932 and 1933 without getting the record. For the years that I did have them the comparison was about the same. I could not give you the comparison for other years because tomorrow is a holiday and I am sure I couldn't get the records from the Stockton office by Friday. We have out of the 40 odd properties in Stanislaus County the records on about 20 of them. We just had the 20 transferred to us last week. [406]

(Up above where the figure \$68,000 is used, change that to read \$36,000.)

(Testimony of Gustave Momberg.)

The Witness: (After one day's recess.)

I secured for the years 1932, 1934, 1935 and 1936 similar figures that I gave upon the 50 properties. There were also 12 properties that were the same and had the same category in 1933 and 1937 but in the years 1932, 1934, 1935, and 1936—they changed in various years. “Some of them were leased in some years and some were operated in some years. So, therefore, these figures are for the three different groups, and I did not total—they are totaled for each group but they are not totaled for the whole.” On the four properties which are operated the gross income in 1932 was \$13,270. The actual expense was \$12,036. The taxes were \$7,666 and the net loss was \$6,431. Those were the four properties that we have operated most of the time and that was for 1932. Of the 12 properties which had different categories in different years actual income in 1932 was \$7,843. The expense was \$7,838. The taxes were \$4,399. The net loss was \$4,394. Most of them were operated in 1932. Of the 34 properties, all of which were leased during all of these years, had a gross income of 1932 of \$4,809, an expense of \$983. Taxes were \$13,831 and net loss was \$10,005. These figures are for the calendar year. Therefore, they include the installments in 1931-32 season and the first installment of the 1932-33 season. In 1933 gross income of this group of properties was \$18,368; that is, gross income of

(Testimony of Gustave Momberg.)

these four properties. The expense was \$13,911, the taxes were \$35,001; the operating profit was \$955. For the 12 properties the actual income in 1933 was \$7,596; the expense was \$734; the taxes were \$2874 and the farm profit was \$3,988. For the 34-property group, in 1933, the gross income was \$11,317; the expense was \$888; the taxes were \$7,375 and the farm profit was \$3,053. In 1933, for the four-property group, the gross income [407] was \$36,173; the expense was \$22,413; the taxes were \$2,020 and the farm profit was \$11,640. For the group containing 12 properties, for 1934, the [408] gross income was \$6,266; expense, \$3,045; taxes \$1,576 and the farm profit was \$1644. For the group containing 34 properties, the gross income, in 1934, was \$12,346; the expense was \$1912; the taxes were \$7,660 and the farm profit was \$2772. For 1935 on the group containing four properties, the actual income or gross income was \$25,270; the expense, \$24,229; taxes \$3460 and the farm profit showed a loss of \$2419, that is, in the red. For the group containing 12 properties, in 1935, the gross income was \$6,661; the expense was \$1943; the taxes were \$2,002 and the farm profit was \$2,715. For the group containing 34 properties, in 1935, the gross income was \$11,387; the expense was \$2,060; the taxes were \$20,350 and the farm profit showed a loss of \$11,022. The explanation of that extra large tax item in that year is, as I stated, that there

(Testimony of Gustave Momberg.)

was a portion of these properties on which we stopped paying taxes in the calendar year 1932-33 and in that year we paid up all the taxes which had been delinquent during this period on this group of properties in 1935 together with the current taxes which explains why the taxes were so high for that year. Those taxes then should be properly distributable over the previous years of 1933, 1934 and 1935.

For the year 1936, the four-property group had an income of \$22,470; the expenses were \$21,567; the taxes were \$3,011 and the farm profit showed a loss of \$2,108. For the 12-property group, the gross income, in 1936, was \$13,435; the expenses were \$4,228; the taxes were \$2329 and the farm profit was \$6,877. In 1936, for the 34-property group, the income was \$14,602; the expenses were \$2,069; the taxes were \$8949 and the farm profit was \$3,583. For the year 1937, correcting the figures that were given in previous testimony, for the four-property group, the actual income was \$33,958; the expenses were \$18,762; the taxes were \$2976 and the farm profit was \$12,220. For the [409] 12-property group, for 1937, the gross income was \$13,775; the expenses were \$3699; the taxes were \$2285 and the farm profit was \$7790. For the 34-property group, in 1937, the gross income was \$17,753; the expenses were \$2781; the taxes were \$7437 and the farm profit was \$5,534.

(Testimony of Gustave Momberg.)

I have estimates based on such information as is available to date for 1938. In the case of the four property group during the years 1932 to 1937 three of the properties had always been operated. However, in 1938 these three properties were leased. Therefore, the gross income will be less, expenses will be less but so far as net returns are concerned they will be about the same. The estimated income of California Lands' share in these properties will be \$7,500 in 1938; the California Lands' share of the expenses will be \$1700 the taxes will estimate close to \$3,000; and the farm profit will be \$2800. The net income from the four properties in 1938 would be \$7500. In the case of the 12 properties the estimate for 1938 will be \$8,200; expenses, \$3,000; taxes \$2,500; estimated farm profit \$2700. The four-property group are properties that were operated from 1932 to 1937 inclusive; the 12 property group are properties that were in and out so far as leasing and operating were concerned. In different years they were leased and in different years they were operated, and the 34-property group the estimated income for 1938 is \$9400; estimated expense \$2400; estimated taxes \$8,000; estimated net loss \$1,000. No supervision, no expense for the maintenance of the district office or the head office, no interest on investment, no insurance on the buildings, no depreciation on the buildings or plants are included in the expense above mentioned. [410]

(Testimony of Gustave Momberg.)

Our office expense in Merced was approximately \$16,000 for the year 1937. Approximately one-third of the \$16,000 would properly be charged to the 50 properties in the group. California Lands are operating between 2,000 and 3,000 farms in California. I am handling from 180 to 220 so approximately seven to ten per cent of the farms are under my supervision and I suppose generally speaking the head office expense would probably be allocated in about that proportion if it were allocated.

Cross Examination

The Witness: For the first group containing four properties the acreage is 867 and the sale price which we are asking for the land is \$137,500. We are offering them at that figure but are not selling them. The second group containing 12 properties contains 572 acres and the sale price which we are asking is \$94,500. For the group containing 34 properties there are 2249 acres and the sale price is \$200,200. The grand total is approximately 3500 acres and we are asking approximately \$450,000.

There were approximately 200 to 300 acres in cotton in this group of 34 properties. I did not figure in my estimate any government parity payments. Those payments amount to a two cent penalty if we don't comply and a two cent bonus if we do comply, which makes a difference of two cents when you get it.

(Testimony of Gustave Momberg.)

The only years in which we have included all the taxes and in which we have paid all of the taxes and no others are 1936 and 1937. We paid taxes in 1932 on this group of properties and some of them were not paid in 1933. There will be four properties that will not have the first installment of the 1937-1938 taxes paid but that was included in my estimate of the taxes to be paid. In other words, they were omitted from the taxes, or I took a cognizance of the fact that they will not be paid in making this estimate. I can give a pretty close estimate of the current taxes in 1935. They will be a little less than the [411] 1936 taxes. I would say a fair estimate would be about \$8500 for the current taxes in 1935. If the current taxes for 1935 had been paid with no delinquent taxes, the result that year would have shown a profit of seven or eight hundred dollars in the group of 34 properties.

On the four-property group there were some taxes paid up in 1935 on a portion of one of the properties. I do not know how much it was. It didn't amount to very much. It couldn't have amounted to more than \$400 or \$500. In making up the amount of taxes paid I have not segregated the taxes paid for Irrigation District purposes and for other purposes. I have only been able to take those records from our final report and I have no data available as to what portion was county taxes

(Testimony of Gustave Momberg.)

and what was irrigation district taxes; but there are only two taxes on those properties—either irrigation district or state and county taxes. There are no other taxes in it.

There is included in the state and county taxes all of these other districts; that is, school districts, and improvement districts which are added to the county tax rate and levied in a lump sum.

I have been checking our taxes annually for the last eight years and I think it would be a fair estimate to say that the assessed valuation of the entire group of 50 properties is approximately sixty percent of what we ask for them as a sale price. I am talking about the assessed valuation for state and county taxes; not for irrigation district purposes. On that basis the 34 properties which have a sale price of about \$200,000 I would estimate to have an assessed value of about \$120,000.

The assessed value for state and county taxes and for irrigation district purpose varies but I would say that the [412] assessed valuation of this group of 50 properties for irrigation district purposes is very close to what we ask for them; that is, it is very close to \$200,000. The irrigation district is higher than the county.

I would say in the year 1937 that of the total taxes paid, approximately 50% of the taxes are for irrigation district purposes and 50% for state and county purposes. It just happened that I

(Testimony of Gustave Momberg.)

check that last year and I remember that. By state and county taxes I include all districts that are levied with the county tax rate.

We pay other charges for water than irrigation district tax on a few of these properties where the land is above the ditch and we have a pumping plant to service that land, but it is of small importance. Except in dry years the payment of irrigation district tax entitles us to free delivery of all of the water that we can use or need on our property, of course, within reasonable bounds, for irrigation purposes, without further charge. In dry years the water is not available to have all the water we want. Under those conditions we are put on a quota but there is no charge based on the amount of water we use. The irrigation district tax covers that entire water charge. On the basis of \$3.00 per hundred of assessed valuation which is the present rate on this group of 34 properties, the cost would approximate \$1.75 per acre per year for free delivery of water at the present time—between \$1.75 and \$2.00.

The net results on the two property groups containing the 12 and the 34 properties, in 1935, eliminating from consideration the back delinquent taxes paid, showed a net income of about \$3500. In 1936 it would be about \$10,450 and in 1937 about \$12,300 and estimate for 1938 at \$1700. In 1935 including all of the 50 properties we show a profit of

(Testimony of Gustave Momberg.)

\$3500 for the two groups and the loss on the four property group would [413] bring that down to about \$1100 profit. On all of them for 1936 we show a profit of about \$8300 and on all of them for 1937 we show a profit of 24,500 and some odd dollars and on all of them for 1938 of about \$4500.

Since 1933 we have made 67 sales. I have no record of the sales for cash but they are mighty few; but our record of sales to date in the Merced Irrigation District were 67 sales with 11 of them delinquent at this time.

Generally speaking, all of these 50 properties that I have been talking about and all others that I operate were foreclosed properties.

I would say that these 50 properties are fairly comparable in quality to what remains in private ownership in the district. The properties constituting these 67 sales that were made were below the average of our holdings. Most of the sales were made since 1935, very few made prior to that time. The bulk of the sales were made the first of January, 1936 to April, 1937. Our sales have fallen off 80% since 1937. The slump started in the fall of last year. There has been considerable inquiry since the election for property.

By delinquency in connection with the 11 sales, I mean failure to meet both principal payments and interest payments. As to the remaining 56 sales, these are up on their payments, but I would ex-

(Testimony of Gustave Momberg.)

plain that most of those payments are due on December 1st or later and that the 11 cases are property holders who have indicated to us at this time that they cannot make their payments. We will hear from a lot of others in the next month. Those properties comprise 20 to 40 acres. I would say 30 acres would be a good average and the fair average sale price would be between \$50 and \$65 per acre. Those were properties that had been leased. None of them had been operated by the company. We have not had much success farming this land as a whole. [414]

We were consulted in fixing the price at which these 50 parcels of land are held but the prices are not entirely with our approval.

There is no one connected with California Lands Inc. who is more familiar with the handling of these lands than I am. I have carefully inquired into the past history of these lands; their productive capacity and general possibilities in the way of production.

The charge for water service for irrigation water supplied by gravity of \$1.75 per acre per annum is rather low on the better properties but it is not low on 1400 acres out of this group.

When we resumed paying taxes in 1935 it was not my judgment as a practical farmer and as a citizen of the city of Merced that the district had been effectually and finally refinanced on the base of 50¢ on the dollar.

(Testimony of Gustave Momberg.)

They were paying these taxes on the ten year installment plan which of course costs us interest; but the outlook for general farm prices at that time and the outlook for sales and profit in farms in California were looking up. We had two years between 1935 and 1933 which had been quite an improvement in general conditions. It was our thought that perhaps it would pay us to redeem those taxes and we could sell those properties. However, I was optimistic.

There was a very substantial reduction in what we call county taxes prior to the levying of the tax for the year 1934-35. That reduction has not continued on to the present time. I cannot say that the tax rate in Merced County today is what it was in 1932 but I believe the taxes have practically increased 90 to 100 per cent since 1932-33. They went up 25% last year. These taxes are levied to support the schools in these various school districts and for road improvement district taxes and to [415] service the bonds of the County of Merced and of these improvement districts. We find listed on our tax bills a specific statement of the items making up the grand total of the county tax rate and I find these different taxes for bond service listed upon the tax bill. During the time I have been operating these lands I do not recall that there were any cuts made in taxes for bond service of any of these other districts.

(Testimony of Gustave Momberg.)

This company which I was managing, operates properties that have been foreclosed upon by the various subsidiaries of Transamerica. That is, Bank of America, the Occidental Life Insurance Company, Pacific National Fire Insurance Company, Central Bank of Oakland and any subsidiary of Transamerica transfers its property to us. They had mortgages on quite a bit of the land in Merced Irrigation District. The land that I have been operating is fairly representative of all of the land within the District. Other lending institutions throughout this period that we have been referring to here have had mortgages and deeds of trust upon lands within that district.

I would judge about six to seven tracts of land in this group of 50 were in dairies, but not in all the years. They were in dairies most of the time in the years that we had alfalfa. We did not operate any of them but during this period we found tenants for the six or seven tracts that were operated as dairies.

There are approximately 3500 acres in this group. About 200 acres is waste, that is canals and roads and not farmable; 1300 acres are lands that are above the ditch or subject to seepage or undesirable from the standpoint of weeds for the growing of row crops. Approximately 400 acres of this group has been in alfalfa nearly every year of the term; 40 acres were in almonds; 200 acres in fig

(Testimony of Gustave Momberg.)

orchards; approximately 270 acres in grapes of all varieties; 80 acres in peaches and the balance or about 900 acres, suitable for row crop farming, such [416] as beans, cotton, sweet potatoes, corn. It is an agricultural community.

Merced is within the district and is a prosperous city. Atwater has been getting quite a bit of its improvements from WPA money.

Referring to the four properties which we operated in 1936 the approximate figure for expenses was about \$20,000. All of our expenses on those properties in that year, including taxes, were about \$24,500. That constituted a per acre cost on the 867 acres of approximately \$27.00 per acre, if we want to figure it that way; but for practical purposes it would not be correct because we were only operating the acreage in fruit on these properties and were not operating the open land or the waste land. The open land on these properties were leased. The comparison would be the same. The operation of the properties would have brought a greater expense than is actually shown here, together, of course, with a greater revenue. The expense would be greater than \$27.00 an acre for the cost of operation on the average but the income would be a little bit greater. The district charge would be about \$1500 on the 867 acres. Of our total cost of \$27.00 an acre or more the total charges for all irrigation purposes, that is, the \$3.00 rate,

(Testimony of Gustave Momberg.)

constituted only about \$1.75. In other words, about five or six percent of our total expense was for all the water expenses.

Redirect Examination

The Witness: We have one farm outside of the district of about 22,000 acres which requires very little of our attention. It is leased for grazing purposes.

Recross Examination

The Witness: The prices that are fixed on these lands were on [417] the basis of what they should pay interest on over a period of time for fair prices and bear their tax burden. It was determined on the basis of a water cost between \$3.00 and \$4.00 rate per hundred over a period of time, and also on the tillable land and not on the waste land or the untillable land.

B. P. LESTER,

called as a witness on behalf of petitioner, testified at the former trial in this court, and the testimony received in evidence here as follows:

The Witness: I am B. P. Lester, of Los Angeles. I am engaged as secretary for bond reorganization committees, and am an officer and director in an investment securities house. I have been in the investment business for 14 years, and connected

(Testimony of B. P. Lester.)

with reorganization work for about 5½ years. I was secretary for the Merced Irrigation District Bondholders' Protective Committee since the formation of that committee.

In March or April, 1931, an informal committee was formed as a result of conferences between officials of the District and the houses that underwrote and distributed the bonds of the District. That committee was finally organized in March, 1932.

At that time there was another association called the California Irrigation and Reclamation District Bondholders' Association, which was working on the Merced Irrigation District matters.

When the report of the Giannini Foundation was completed, both groups of bondholders formed into a joint committee to consider and discuss the results. That joint committee has functioned as the Bondholders' Committee ever since, in regards to the Merced Irrigation District. I have been the [418] secretary of that Committee.

Investigators for the Bondholders' Committee prepared a great many reports in reference to the Merced Irrigation District, prior to the report of Dr. Benedict.

All of the reports prepared by investigators for the bondholders' committee and Dr. Benedict himself indicated that some sort of refinancing or reorganization was necessary and there was never

(Testimony of B. P. Lester.)

any question in the minds of the members of the Bondholders' Committee as to the need to refinance the District. The only difference in opinion among the committee members was as to the manner in which such refinancing should be accomplished.

The firm of Thebo, Starr & Anderton made a report for us in April or May, 1931, indicating that there might reasonably be expected a figure of close to \$500,000 per year revenue to the District from the power contract. Before the 1st of August, 1931, they revised that figure to \$450,000 per year. That was a gross figure.

After the Benedict report had been made, the District approved a certain financial plan in November of 1933. The Bondholders' Committee directed the employment of men to solicit the bondholders to deposit their bonds under the plan.

The Bondholders' Protective Committee addressed a letter to each bondholder whose address was known, whether he had deposited previously under some other plan or not.

The letter, dated January 7, 1935, addressed to "To the Holders of Bonds of Merced Irrigation District," was then read into the evidence as follows:

"Under date of December 15, 1933, the undersigned Bondholders' Protective Committee announced that a Refunding Plan had been formally adopted by the Board of Directors of

(Testimony of B. P. Lester.)

the Merced Irrigation District, had received the approval of the California Districts Securities Commission, and had been approved by the [419] voters of the District at an election held November 22, 1933. Concurrently with such announcement copies of such plan were forwarded to bondholders. Up to the present time, the holders of approximately 60% of the District's outstanding bonds have deposited or agreed to deposit with the Committee. [420]

“Bondholders were notified in the letter of December 15, 1933 that the District was making application to secure Federal aid in the repurchase or refinancing of the District's bonds. Holders were also notified that the Committee had assured the District that in the event funds for such purpose should be made available from a Federal or State agency, such offer would be submitted to bondholders.

“Negotiations for a loan from the Reconstruction Finance Corporation have been actively carried on during a period of the past several months, between the District and the Reconstruction Finance Corporation. The District has recently informed the Committee that the Reconstruction Finance Corporation has approved the District's application for a loan which will enable the District, conditioned upon

(Testimony of B. P. Lester.)

an agreement being effected between the District and its bondholders, to pay \$515.01 for each \$1,000 bond of its outstanding bonded indebtedness.

“While the Committee feels that the figure offered pursuant to the Reconstruction Finance Corporation loan is unduly low it is, however, important that the Committee be advised of the wishes of bondholders with reference to the acceptance or rejection thereof. Arguments which might be advanced in favor of, or in opposition to such offer would be based largely upon the circumstances of the individual bondholder. As a consequence, the Committee refrains from advancing any of such arguments in order that it may not appear to seek to influence the bondholders in their decision.

“We are enclosing for your use a questionnaire which we request that you complete and return in the enclosed stamped envelope to reach us not later than January 26, 1935. As the Committee’s action must depend to a great extent upon the expressions of bondholders in this manner, all holders are urged to express themselves immediately. [421]

“Holders are urged to cooperate to the fullest extent possible with the Committee in whatever course may be decided upon after the Committee has received this expression of opinion.”

(Testimony of B. P. Lester.)

A questionnaire was enclosed in the letter (and said questionnaire was read into evidence) (for the questionnaire see Exhibit "B", Appendix, p. 758) and the result of the vote on the questionnaire was, the holders of \$10,221.00, or 63 per cent of all bonds outstanding, voted in favor of the cash plan. \$1,147,000 or 7% of all bonds outstanding, voted for the refunding plan of December, 1933.

In view of this vote taken, the Committee had a meeting in San Francisco, adopted the cash plan, pursuant to the original bondholders' protective agreement, and requested the deposit of bonds from bondholders. At this time there was just short of 60% of the bonds deposited with the committee.

The Committee then gave the holders of those bonds a 30 day notice to withdraw if they objected to or refused to go forward with the cash plan. About 2 per cent withdrew. The rest were deposited by the Committee under the cash plan. At the present time there is approximately 90 per cent deposited under the cash plan. Those bonds were delivered to the Reconstruction Finance Corporation and are held as collateral on the loan to the District.

The bonds of the Merced Irrigation District during the years from 1925 through 1929, were enjoying a market price in excess of par. They sold as high as 106¼. With default in the District, the

(Testimony of B. P. Lester.)

bonds went down to—in early 1931—to 45 and 50. Gradually they declined until their low point, which was reached at the end of 1931—and during the year 1932—when they were as low as 16 cents on the dollar for the 5½ per cent bonds, and 18 cents on the dollar for the 6 per cent. In the spring of 1934 they were selling at about 28. They fluctuated [422] between 28 and 32 until the fall of 1934, when the RFC loan was granted, and they appreciated in four or five days with the announcement of that news, from 28 to 30 to as high as 43 and 44. Gradually from that time they increased to the final time that the RFC took up the bonds at 5½, the present price.

Cross Examination

The bonds were not listed on any exchange. The bonds were actively exchanged. In an issue of sixteen and a quarter millions of bonds, there are quite a number of them change hands currently from time to time. They are reported from time to time by various statistical services. Those prices are reported and printed and furnished to brokers, and from that procedure I base my determination of the market value of said bonds.

I know of no reason why the letters sent out by the committee to the bondholders did not provide an additional alternative to the bondholder of retaining his old bonds. As far as I know, the only

(Testimony of B. P. Lester.)

reason was that no one on the committee or on the outside believed the District would be able to pay the old bonds.

The two Messrs. Bekins were members of the Committee. The estate of which they are executors had \$186,000 of bonds. They had deposited their bonds under the refunding plan. James Irvine had \$100,000 of bonds, but they were not deposited under the refunding plan. The West Coast Life Insurance Co. had originally deposited. The company was represented by Mr. Etienne, a member of the Committee; he was president at that time. Mr. Charles Bates had some \$80,000 or \$90,000 of bonds, but I don't think he ever deposited them.

When the cash proposition had finally been voted on by the Committee, the result was 8 to 5 in favor of the cash offer plan. Those of the Committee who voted against it were: [423] Mr. Milo Bekins, Mr. Reed Bekins, Mr. Bates, Mr. Irvine and Governor Gillett.

After the cash proposition had been finally voted on, Mr. Bekins left his own bonds in and withdrew the estate bonds. Mr. Etienne had the bonds of the West Coast Life withdrawn. Mr. Bates' bonds were never deposited and neither were Mr. Irvine's under either plan. Mr. Etienne voted in favor of the plan. He stated that he felt compelled to go forward with the cash plan, in view of the returns from these bondholders, but that the Board of Di-

(Testimony of B. P. Lester.)

rectors of his company had directed him to withdraw the bonds of the company.

Governor Gillett resigned from the Committee altogether at about this time.

Pursuant to the provisions under which the bonds were originally deposited with the Committee, providing that once a plan was adopted by the Committee, they were compelled to file that plan and notify the depositing bondholders, and under that agreement they had 30-day right to withdraw from the time notice was received. The withdrawal was conditional upon the withdrawer paying the total propositional amount of expenses (around \$9.18 per \$1000 bond) incurred by the Committee during the period it had been in existence. That amount was paid by those that withdrew, and subsequent to the adoption of the cash plan, the District paid the expenses to the Committee, who refunded to the withdrawers that amount by them paid.

If Mr. Etienne made any statement at the meeting when he voted in favor of adopting the cash plan, stating that the reason he did it was because of the referendum, and not his own personal views, I did not hear it.

At the time the referendum went out the bonds were around 40, I believe. [424]

There was almost continuous contention in and about this District relating to the refunding of this bonded debt. There were many different plans con-

(Testimony of B. P. Lester.)

firmed and rejected, and various negotiations taking place without apparent result, and I think this certainly influenced the bondholders some in respect to their attitude to having this over with and making a day of it.

There was no written statement prepared of the overlapping debts. No report was made to cover the loans on the lands in the District secured by mortgages and deeds of trust. We went to the Bank of America, who reported \$980,000.00 mortgages held by them, including cases of lands taken over.

At the time the bondholders were asked to choose between those two plans, it had been a little over a year and a half since the bondholders had received anything in the way of principal or interest. 857 bondholders voted on the plan, either way. 658 voted in favor of the cash plan, and 141 in favor of the refunding plan, and 58 made no preference. 60% voted for the cash plan.

Redirect Examination

The Bondholders' Protective Committee approved the cash plan by a vote of 8 in favor and 5 against. Prior to that time the Committee voted unanimously in favor of securing a referendum from the bondholders. Each member of the Committee was entitled to one vote.

To the best of our knowledge, the total number of bondholders was approximately 1200. There are

(Testimony of B. P. Lester.)

60 bondholders representing \$961,000, or 5.9 per cent of the total debt, who are represented here in court as protestants. There is a block of \$41,000 of bonds, representing two-tenths of 1 per cent, held by holders whose bonds were deposited, who have not withdrawn their bonds, but who have informed the Committee that they object to having the bonds turned in at the 51½ figure, and have [425] not taken the cash.

There are \$578,000 of bonds held by 59 people, and representing 3.6 per cent of the total, who have not turned in their bonds, who have not protested in this proceeding, and have taken no action whatsoever in the matter.

There are \$73,000 in bonds, representing approximately one-half of 1 per cent, the owners of which we are not able to locate. That makes a total of 10.2 per cent. The balance of 89.9 per cent have been turned in and they have taken their 51½ cents.

Roughly, it would be about 1050 bondholders who have deposited their bonds.

Recross Examination

At the time the cash plan was adopted, the chairman of the Bondholders' Committee was Mr. Fred G. Stevenot, who is an officer of the Transamerica Corporation, and I believe an officer of the Bank of America. Mr. Stevenot voted in favor of the cash plan. Mr. Robert Fullerton, Jr., is a retired in-

(Testimony of B. P. Lester.)

vestor of Pasadena, and was vice-chairman of the Committee, and voted in favor of the cash plan. Mr. Fullerton is also a director of the Citizens Commercial Trust & Savings Bank of Pasadena, California. Mr. Charles D. Bates is a director and member of the firm of Bates & Borland at Oakland; he voted in opposition to the plan. Mr. Milo W. Bekins is an officer of the Bekins Van & Storage Company of Los Angeles; he was not present but his proxy voted against the plan. Mr. Reed J. Bekins, a brother of Milo Bekins, and he voted against the plan. Mr. Archibald Borland, a partner of the firm of Bates & Borland, Los Angeles, voted in favor of the plan. George E. Crothers, San Francisco, formerly a Justice of the Superior Court, voted in favor of the plan. Mark C. Elworthy, investment business, firm of Elworthy & Company, voted in favor of the plan. Victor Etienne, Jr., is president of the [426] West Coast Life Insurance Company, voted in favor of the cash plan, and subsequently the bonds of the West Coast Life Insurance Co. were withdrawn. Governor Gillett voted in opposition to the plan. Mr. M. Vilas Hubbard is president of the Citizens Commercial Trust & Savings Bank at Pasadena, voted in favor of the cash plan. Mr. Earl W. Huntley is an officer of the investment firm of Banks-Huntley & Company, Los Angeles, voted in favor of the cash plan. Mr. Myford Irvine is a son of Mr. James

(Testimony of B. P. Lester.)

Irvine, voted in opposition to the plan. Mr. Kepingler was chairman of the Committee from the time it was originally organized under the Bondholders' Protective agreement on March 1, 1932, and remained chairman until he resigned as a member of the Committee in January, 1935. He was engaged in reorganization work in San Francisco. I do not believe he was an officer of the Bank of America, although at the time I believe he was representing the Bank of America's interests on the Committee.

Recross Examination

Witness said he did not keep any record of the market value of the bonds issued by the districts which have the overlapping liens, and was not familiar with the subject.

Petitioner's Exhibit No. 37 is a letter from the Bondholders' Protective Committee to the bondholders of the petitioner dated December 15, 1933, and is set out in the Appendix (p. 736).

It was stipulated that the refunding plan referred to in Petitioner's Exhibit No. 37 was approved by a vote of the District by substantially a 10 to 1 majority in November, 1933 and the plan was never carried out and that the respondent West Coast Life Insurance Company had deposited its bonds and they were on file until the cash offer plan was made and a referendum [427] submitted and then they were withdrawn.

Respondent's Exhibit "Y" is a statement containing a list of the bonds represented by the various members of the Bondholders' Protective Committee, the pertinent parts of which are set out in the Appendix (p. 885).

And it is stipulated that Mr. Etienne represented West Coast Life Insurance Company and that Mr. Stevenot represented the Bank of America and subsidiaries. It is further stipulated that Mr. Fred G. Stevenot was an officer of Transamerica Corporation at the time he was on the committee and that Mr. Keplinger was not an officer of the Bank of America but that he represented the Bank of America's interest on the Committee. It is also stipulated that of those who signed the letter which is Petitioner's Exhibit No. 37, Charles D. Bates, Milo W. Bekins, Reed J. Bekins, Victor Etienne, Jr., Hon. James N. Gillett and Myford Irvine all withdrew their bonds and all, with the exception of Mr. Etienne, voted against the cash offer plan except that Milo W. Bekins left his personal bonds on deposit and withdrew along with his co-executor, Reed J. Bekins, bonds in the amount of \$188,000 principal amount, belonging to the Estate of Martin Bekins, deceased. And it is further stipulated that Mr. Etienne, in voting for the cash offer plan, stated he thought the Bondholders' Committee, whether they liked the plan or not, were bound

by the expression of opinion by the bondholders individually.

Counsel for petitioner stated:

“Mr. Stevenot voted for the plan; Mr. Fullerton voted for the plan; Mr. Bates voted in opposition to the plan; Mr. Milo W. Bekins voted against the plan; Mr. Reed J. Bekins voted against the plan; Mr. Borland voted in favor of the plan; Hon. George E. Crothers voted in favor of the plan; Mr. Elworthy voted in favor of the plan; Mr. Etienne voted in favor of the plan; Mr. Gillett voted in opposition to the plan; Mr. Hubbard voted in favor of the plan; Mr. [428] Huntley voted in favor of the plan and Mr. Irvine voted in opposition to the plan.”

Counsel for petitioner then read a statement as to who each of the individuals was, their business and what interest they represented in composing the Bondholders' Protective Committee as follows:

“Mr. Fred G. Stevenot is an officer of the Transamerica Company and an officer of the Bank of America. Mr. Fullerton is a retired investor in Pasadena and was vice chairman of the committee. He was also a director of the Citizens Commercial Trust & Savings Bank of Pasadena. Mr. Bates is a director and member of the firm of Bates & Borland in Oakland. Mr. Milo W. Bekins is an officer of Bekins Van

& Storage Company of Los Angeles and resides in Los Angeles. Mr. Reed J. Bekins and Milo Bekins are executors of the Estate of Martin Bekins. Mr. Reed J. Bekins is a brother of Milo W. Bekins and resides in San Francisco. Mr. Borland is a partner of the firm of Bates & Borland and resides in Los Angeles. George E. Crothers is a resident of San Francisco, formerly a judge of the Superior Court. Mr. Elworthy is in the investment business in San Francisco with the firm of Elworthy & Company. Victor Etienne is president of the West Coast Life Insurance Company. Ex-Governor Gillette—we know who he is. He was a former governor and at that time practicing law in San Francisco. Mr. Hubbard is the president of the Citizens Commercial Trust & Savings Bank at Pasadena. Mr. Huntley is an officer of the investment firm of Banks, Huntley & Company in Los Angeles. Mr. Myford Irvine is a son of Mr. James Irvine of San Francisco.

“Mr. Cook: That is really Santa Ana, counsel.

“Mr. Downey: Santa Ana.” [429]

H. P. SARGENT,

called as a witness on behalf of petitioner, and being duly sworn, testified:

I have been the secretary of Merced Irrigation District since February, 1924 and have been with the District since its organization in January, 1922. The Irrigation District includes a very substantial part of the county of Merced. It was organized under the California Irrigation District Act and does not include any land outside of Merced County.

I have been the officer of the District actively in charge of refinancing since 1931 to and including the present time; also as secretary of the District since 1924 I have been the officer of the District in charge of the office and of the matters incidental and collateral thereto and I am familiar with the original project since the time of its inception. It was necessary to remove 17 miles of the Yosemite Valley railroad out of the reservoir site in order to construct the dam. The estimated cost of the removal of this 17 miles of railroad was \$2,270,000. The actual cost was \$5,500,000.

The District took over the canals and water rights and the other property of Crocker-Huffman Land & Water Co. which was a public utility serving a portion of the lands now in the District and also at that time assumed the obligation of an encumbrance against the system. Among others were obligations to deliver water at very low prices. About 2200 persons were landowners who held such

(Testimony of H. P. Sargent.)

rights to service from the Crocker-Huffman Land & Water Co. After the formation of the District an agreement was made which called for the purchase of these water rights held by some 2200 persons by installment payments over a period of years. The gross amount to be paid annually for the sale of these rights was \$60,000 a year for 17 years and the total amount in 1936 still due was approximately \$400,000 and at the present [430] time there is due on those contracts \$180,000 and that represents about the amount at the time this proceeding was filed. There were about 1200 bondholders holding the bonds aggregating \$16,190,000, at the time of the first proceeding in bankruptcy. In other words, there were a great many more of the Crocker-Huffman holders than the number of bondholders.

In the resolution of November 14, 1934 provision is made for the RFC to advance money sufficient to purchase these Crocker-Huffman water contracts at 515.01 on the dollar. It was not made a condition to the refinancing of the District, however, in the resolution. No attempt has been made to refinance that for the reason that it did not seem practicable. There were a great many of these contracts, about 2200, and it appeared that we would have to have an abstract of title to every piece of property and the expense and the small amount involved did not seem practical of operation. There was also some

(Testimony of H. P. Sargent.)

question as to what might be the effect on the water rights of the District. The underlying water rights were there on which we also did not know what might come about.

With respect to this so-called first refunding plan which was referred to in the letter dated December 15, 1933, the people voted the plan in November. This letter went out in December and the plan gave a substantial relief to the taxpayers for a period of the first four or five years. No cut in principal; sinking fund bonds instead of serial and the Districts' Commission approved the plan and the District started to operate under it and continued to operate or attempt to operate under it until the loan was granted by the federal government or until the approval of the cash offer plan in February of 1935. The District went into default the first year under the plan about \$390,000. [431]

At the present time there are about 30,000 acres of land in the hands of the District unsold. I am in charge of the land department. Since 1929 there have actually been sold 6,000 acres. We have made every effort to dispose of that property as it has been deeded to the District. We find the obligation in the state and county taxes is a deterrent in sales, and the tax title also is a matter which bothers in making sales, and there has not been very much market for lands of any type in recent years in our district. Ordinarily, we sell for the amount of de-

(Testimony of H. P. Sargent.)

linquency against the property if we can find a purchaser but sometimes we sell for less.

Strictly operation and maintenance expense without the Crocker-Huffman contract payments of \$60,000 or without the power plant operation—power plant operation cost us \$22,000—is around approximately \$375,000 per year. That is based on recent experience.

We have been very much backward in respect to capital annual expenditures during this period of District default and attempted rehabilitation.

We have serious problems with respect to flood control in the District and drainage, high water table, etc. I would consider a necessary and reasonable normal capital expenditure for betterment at least \$125,000 a year so I estimate about \$500,000 a year for the operation and maintenance and the necessary capital expenditures at the present time.

Cross Examination

The District first began to operate under Section 11 in 1933. The first tax was 1933-34. When I state that the District went into default on this 1933 refunding plan we were under Section 11. The refinancing tax plan provided for a dollar a hundred the first year and after a survey of the District's land, that is, after a survey of the District of land and a submission of [432] the report to the commission, the board fixed the tax rate at a dollar per

(Testimony of H. P. Sargent.)

hundred under Section 11 and the plan provided for the same rate, that is, a dollar per hundred, and we went into default under the plan; but considering the refunding plan, the maturities on bonds and everything else, we did not levy the full rate but we did levy what the plan provided for.

The Crocker-Huffman contracts are all current; they are all paid up to date and they are maturing at about \$60,000 a year, so they will all be paid out in about three years—in 1941.

There are some drainage bonds of some drainage districts that the Irrigation District has assumed and are paying out in full. We had a contractual relation with the County whereby we took over bonds of three drainage districts that were formed prior to the formation of this District. These bonds are nearly paid out. We have been paying those out in full. There has been no reduction. The last payment of \$8900 is now coming up. When that payment is made they will all be cleaned up at 100 cents on the dollar and there will be nothing more on those drainage districts except our operation and maintenance.

We made no overtures to those Crocker-Huffman contract holders and we had no application for the \$515.01 on their contracts. In other words, while one or two asked if they were going to get it there was no formal application and there were no overtures to them. There just wasn't anything done about it.

(Testimony of H. P. Sargent.)

I have changed my opinion as to the estimate of strictly operating expense considerably, and would like to explain. \$350,000 was the cost I testified to in my former testimony, since that time wages and material have increased 10 per cent, and since that time in three wet years we have found out, to our sorrow, that a great many acres of land flood each year, approximately 10,000 acres [433] being under water in the last three years, large acreage of good orchards going out, and that sort of thing, and we find in this large acreage if we clean out three major sloughs that run through the district, it will take off this water from the land, and that is going to cost approximately \$30,000 a year added to what—well, we did not contemplate that much expense; and then the 10 per cent, 10 or 12 per cent increase in cost of labor and materials also brings that figure up.

We have been paying annually in retirement of the drainage district bonds approximately \$10,000 to \$11,000. I recognize that the acquisition of water rights is a capital expenditure that we purchased the Crocker-Huffman system and with their system of canals and water rights as well, and we have carried them and the payment on the drainage district bonds in the operation and maintenance figure—in the operation and maintenance rather than capital expenditures. I think I included the payments on Crocker-Huffman contracts and these payments

(Testimony of H. P. Sargent.)

upon drainage district bonds in my previous testimony that the expenditures were \$350,000 a year for operation and maintenance.

The good lands that are capable of bearing the assessments on the bonds aggregate approximately 90,000 acres and we have another category of lands which are the poorer lands—189,000 acres in all—189,000 acres gross in the District, including the roads and canals and all that sort, and cities. The net agricultural acreage is about 171,000. The difference between the 90,000 and 171,000, or 81,000 acres, carry the irrigation burden to a certain extent, but it is land which is not able to carry on year after year and pay the water charge. I have stated that as to a portion of the lands comprised within the 171,000 acres the providing of water is actually a burden and an expense to the District and that is reflected in [434] this estimate of operating expense. The result is that the good land is bearing, in my judgment, more than its share. Approximately 17,000 acres is above the ditch, which we boost water to out of booster plants—a series of booster plants, an expensive operation. The District has taken deed to a great number of acres of that land and does not put water on it—rents it dry for pasture and that sort of thing; but we will say if those lands are on the rolls and they could be eliminated from the District, the District

(Testimony of H. P. Sargent.)

would probably save at least \$50,000 a year in the operation cost.

We have a water toll for rice lands under a constant flow but other than that there is no toll system been put into effect. The water toll for rice land is because of the rather heavier burden that is inflicted upon our system as an entirety. The basic tax allows four acre feet of water in supplying rice lands with water. The toll starts on the fifth acre foot of \$1.00. We allow four acre feet without any charge. \$1.25 for the second acre foot. It costs ordinarily about \$6.00 or \$7.00 an acre for the water service for the raising of rice. That is the total tax of the water to the rice. The total cost including the tax and the toll. That figure is not in accordance with this later reduced tax rate that we have had in recent years. Of course, with the \$1.00 rate we have four acre feet of water; then it is not going to cost \$6.00 or \$7.00. When the tax rate is down to \$1.00 the assessed valuation would be say \$60.00 an acre, and that would be 60¢. We would get four acre feet for 60¢. Then a man getting water to raise rice would be paying \$1.60 a year. When the rate is \$3.00 an acre, applying the same method of computing, he would be paying about \$3.80 to raise his crop on an average.

If refinancing were complete it would, of course, bring about a cutting down of the very elaborate heavy expense of [435] maintenance and operation.

(Testimony of H. P. Sargent.)

In other words, the whole District structure may be changed. Certain lands should not be in the district. They would probably be excluded.

A great many acres of the agricultural lands within the Merced Irrigation District was subject to mortgages and deeds of trust.

The maintenance and operation cost for 1937 was approximately the figures that I have given.

Redirect Examination

At the previous trial I stated that the normal strictly operating expense of the District was approximately \$350,000 a year. In that I did not include the Crocker-Huffman or drainage contracts.

Counsel for petitioner stated that the power income for 1938 was \$730,558.47; for 1937, \$625,-663.45 and for 1936, \$584,429.64.

It was conceded that the first refunding plan was adopted by the people of the District November, 1933. The Reconstruction Finance Corporation's first resolution was passed by Reconstruction Finance Corporation November 14, 1934. The cash plan was adopted by the Bondholders' Protective Committee February, 1935. The first bankruptcy action was filed in April, 1935. The first disbursement was made in October, 1935; that is, the big disbursement. The trial of the first bankruptcy action was in February, 1936. The judgment in that case was reversed by the Circuit Court of Ap-

peals in April, 1937. The District filed a petition for writ of certiorari in the United States Supreme Court and certiorari was denied by the United States Supreme Court in October, 1937. The State reorganization statute was passed in March, 1937. The District's action in the state court was filed in July, 1937 and was tried in January, 1938. Notice of decision in the state proceeding was [436] filed March, 1938. The decision of the United States Supreme Court in the Bekins case upholding the second federal bankruptcy act was rendered in April, 1938 and this action in this court, the one we are trying, was filed in June, 1938.

Petitioner's Exhibit No. 38 consists of the Notice of Motion in and the decree of the Circuit Court of Appeals and is set forth at pages 333 to 339 of Respondents' Exhibit "00".

It is stipulated that in addition to the stipulation already made that West Coast Life Insurance Company paid approximately par for the bonds it holds, that the same is true with respect to Pacific National Bank and with respect to Belle Cole and R. D. Cole, the same is true also with reference to Mary Morris.

Further Cross Examination
of

MR. NEEL:

I wish to correct the statement I made that the depositing bondholders were paid \$239,838.98 interest—it is a lesser amount—it is \$168,582.00. Subtracting those figures from the unpaid matured bond interest coupons as a payment thereon, it leaves the item of unpaid matured bond interest coupons net of \$4,082,919.

Referring to the item of accrued interest on registered bonds and coupons I have made a calculation of the credits for accrued interest on a portion of the bonds which could be considered as having been paid at the time of the payments to the RFC and the depositing bondholders. It amounts to \$129,000. Subtracting that from my original figure of accrued interest on registered bonds and coupons leaves \$875,757.74, and the current liabilities of \$5,448,256.47. We have a number of funds on the assumption that our outstanding obligation was the \$16,190,000 of bonds. For the purpose of showing the net balance sheet situation as to surplus or deficit those several funds should be [437] lumped together and that would show our capital liabilities of the unpaid bonds less current matured bonds of \$15,804,000 and that would show as of this time a net capital deficit of \$773,355.21 and that is on the assumption that all of the \$16,000,000 bond issue is outstanding and all of the un-

(Testimony of E. E. Neel.)

paid matured bonds are outstanding and interest is calculated on the unpaid matured bonds and coupons.

Respondent's Exhibit "Z" is a form of balance sheet from which the witness has been testifying, and is set out in the Appendix (p. 885). [438]

Counsel for respondent at this time read into the record from certain trade sheets for Elworthy & Company in connection with cross examination of Mr. Lester as follows:

"November 4, 1936 we will buy, subject to confirmation, Merced fifty-five flat. Then on the date of May 5, 1937 at fifty-six flat. And on the date of October 1, 1937 at fifty-six flat; and also on the date of February 5, 1935 five thousand Merced Union High School District 5 per cent bonds on 101.10 basis."

It is stipulated that Merced Union High School District is largely within Merced Irrigation District.

Respondent's Exhibit "BB" consists of the investment trade sheets above referred to and are summarized in the Appendix (p. 888).

(Petitioner rested.)

Mr. Cook stated to the Court that he had been unable to join with other counsel in stipulating as to what their several clients had paid for the bonds

that they hold for the reason that he represents 68 clients holding bonds of petitioner, and is not informed as to what some of them paid for their bonds, but that he knows it to be a fact that about \$500,000 principal amount of the bonds he represents were purchased from practically the original issue acquired in the very early days and that these bonds have been held for a long time and he assumed that they had been purchased at a figure above 90.

At this point the respondents moved for a dismissal of the proceedings on the ground of the failure of the evidence to support the petition, the insufficiency of the evidence and upon the other grounds urged in the several answers on file. The motion was denied subject to a review if deemed erroneous.

Respondents moved to strike out petitioner's exhibit No. 9 on the ground that no proper foundation was laid for the introduction of the same in that there is no showing that [439] the District ever approved the execution of the instrument at an election, the right to make such motion having been reserved at the time the exhibit was offered. The motion to strike was denied.

The respondents also moved to strike the contract of September 16, 1935 upon the same grounds and adding to that motion that the contract of September 16, 1935 is in conflict with the resolution of November 14, 1934 which purported to grant the

so-called loan to the District. The motion was denied. Express exception to the ruling was made for the reason that counsel wanted to ask whether it is the intention of Merced Irrigation District to restore to the bond fund these sums which it is claimed aggregate \$600,000 which funds were referred to in the examination of Mr. Neel. Counsel for petitioner was asked the direct question if he offered to make such restoration, to which he replied that he did not.

E. E. NEEL,

a witness on behalf of respondent, recalled, testified as follows:

Direct Examination

Assuming that the old securities held by the Reconstruction Finance Corporation have been cancelled or are owned by the District, respondent's Exhibit "AA" is a balance sheet which correctly represents the asset and liability situation of Merced Irrigation District and shows the amount of the RFC loan used to acquire those securities as of November 1, 1938 and shows all of the outstanding bonds and coupons and interest thereon other than the RFC bonds, as an obligation, and shows a surplus of \$10,743,532.62.

Whereupon respondent's exhibit "AA" was introduced in evidence and is set out in the Appendix (p. 887). [440]

(Testimony of E. E. Neel.)

The Witness: That brings down to date in general the form of our report to Reconstruction Finance Corporation which is in evidence.

Respondent's Exhibit "CC" is an assumed balance sheet, and is set out in the Appendix (p. 889).

CARL A. HEINZE,

a witness on behalf of the respondent, the testimony being taken from the reporter's transcript of the evidence taken in this Court in the matter of Merced Irrigation District, an Irrigation District, debtor, number 3907 in Bankruptcy commencing at page 290 as follows:

I am Carl A. Heinze, Los Angeles, California, a consulting electrical engineer. I have practiced in Southern California for the past 32 years. For 28 years I was engineer in charge of construction of power plants upon the original Los Angeles Aqueduct; had charge of their operation for some three years after construction work was completed; was transferred to Los Angeles, made chief of electrical distribution, during which period of time, that is, 1915 to 1926, I had charge of the entire electrical distributing system covering the expenditure of about forty millions dollars. In 1927 I was made assistant chief electrical engineer of the Department. In 1928, made assistant chief engineer

(Testimony of Carl A. Heinze.)

and general manager of the Department of Water and Power. Since 1930 I have engaged in private consulting practice, having my own office, during which time I have acted as consultant for the cities of San Francisco, Palo Alto, Fresno, Burbank, Glendale and Vernon. I built and worked on the original design, actually constructed the first large power plant in the City of Los Angeles, and in later years did part of the designing and had charge of operations of their complete distributing system [441] in connection with their hydro plant operation.

My work in connection with the Los Angeles Aqueduct required that we make continuous studies of the rainfall and expected power revenue to be derived from water flow.

I am familiar with the Merced River only insofar as I have studied it from the government supply reports. I have made such a study of the records from 1902 to date. Prior to 1902 the records are not so complete nor accurate, in that measuring stations have been fixed since that date.

I am also familiar, through my study, with the Exchequer power plant of the Merced Irrigation District, and I have computed the amount of power that would have been produced by that plant per year or per month, had it been in operation since 1902, exactly as the District has operated in the period from 1927 to date.

(Testimony of Carl A. Heinze.)

My computations are based upon the run-off of the river, coupled with the actual experience of the District over the last nine years. The average return per year, based upon a sale price of .0045 per kilowatt hour, with an 80 per cent load factor, and a maximum of 31,250 kilowatts, having in mind irrigation requirements at all periods and all times, over the period of 34 years, from 1902 to 1935, is \$500,415. As costs of operation I use the District's figures which produce an average per year of \$21,500, for the 9 year operating period of the District for labor and material chargeable to operating expense.

I used two methods in regard to depreciation, and as a result have my summaries in two methods.

The District itself uses what is known as the straight line method of depreciation, and their figures would give for the power plant itself, exclusive of the dam and intake, \$22,854 per year. [42]

On a basis of a 5 per cent sinking fund method, which is the customary practice for hearings in rate cases and condemnation suits before the California State Railroad Commission, the annual depreciation, exclusive of the reservoir and dam, would be \$10,989. These lives, of course, are considerably shorter than the District used, and, of course, this amount would be much less, if used the longer lives as used by the District, which has

(Testimony of Carl A. Heinze.)

taken the life of the reservoir or dam as 100 years. In my use of the 5 per cent sinking fund method, I shortened that to 50 years, because that is the customary rate used by the State Railroad Commission. On electrical equipment, the District has shown a life of 40 years. I have shown a life of 35, because that is customary in all these proceedings here in California. On water wheels and turbines, the Railroad Commission uses 35, and District has used 40. Had I used the longer lives, as used by the District, the depreciation would be decreased.

The net income to the District on the average for the 34 years, after deducting operating expenses and depreciation, is \$456,058. This figure is based on the depreciation as used and set up by the District, the straight line method. If I used my straight line method I would get \$467,932.

It is common practice, particularly in connection with the control under the State railroad commission in the application of rate structures, to use the sinking fund method, and only put up as depreciation the amount which, plus its earnings, will equal the principal after a given number of years. All rate structures in the State of California under the administration of the State Railroad Commission carry in all cases a sinking fund method—it has been in the past 6 per cent, and lately been reduced to $5\frac{1}{2}$ per cent. In this set-up I used

(Testimony of Carl A. Heinze.)

5 per cent, thinking that possibly a municipal district such as [443] this could not earn as large a profit with their idle funds.

In figuring my data for the run-off of the Merced River back to and including 1902, I used the records as recorded by the United States Geological survey in their water supply papers, with the exception that no such records were made during the years 1914 and 1915, and for which two years I used the reports and measurements as recorded in the State Department of Irrigation and Engineering, Bulletin 5, which gives a run-off of the Merced River.

As the basis for the experience figures of the District during the nine years of District operations, I used the District's record of kilowatt hour generation: from the amount of water held in storage month by month, I determined the average level of the water in the reservoir, and from the District's records of output, I determined the number of kilowatt hours per acre foot passing through the reservoir during any particular month. From these figures I completed a chart upon which each one of these monthly operating results were platted. Through these I then drew an average line to indicate average conditions which anyone else could expect to obtain for operating under the same conditions that the District did. And in that

(Testimony of Carl A. Heinze.)

way, I got a factor or relationship of kilowatt hours produced per acre foot passing out of the reservoir. It is very easy to see that more kilowatt hours could have been produced than actually were produced, but in my computations I have taken the figures as the District actually operated.

There is at least 50 per cent of the time in which the District got more kilowatt hours out of an acre foot of water than my study shows, because I used an average. Also, the District has been forced by reason of preference to giving water for irrigation purposes, to pass more water through the plant than correspondingly they generated kilowatt hours. Thus in my [444] reports I have irrigation requirements preference on that account. Also, by contract, the power plant was only operating 80 per cent of the 24 hours per day.

The figures of run-off as published by the United States Geological Survey, show that the nine years under which the District was operating were the lowest group of nine years within that period.

The amount of money that would be required annually to amortize a loan of \$8,600,000 at 4 per cent over a period of 40 years, is \$434,300 a year.

Mr. Cook: Q. Supposing the District used the water primarily and solely for the purpose of power generation, and not giving any consideration to irrigation necessities, how much

(Testimony of Carl A. Heinze.)

more power revenue would the District receive per year?

A. The plant should be able to produce 15 to 25 per cent more power under those conditions.

Cross Examination

A. I did not assume in my hypothetical answer that power would be delivered on a 100 per cent load factor at .0045 per kilowatt hour. It was in accordance with the contract now in effect.

The Merced River stream flow is perhaps exceedingly variable. It varies about like all other streams in California. In 1924 the run-off was 271,000 acre feet. For 1909 it is 1,605,000. For 1911, 2,111,000. For 1906, 2,088,000. 1907, 2,108,000. For 1931, 257,000.

The power income is not directly proportional to the run-off of the stream. In the peculiar conditions existing in the operation of the Exchequer power plant, when you have your maximum flow, these extreme flows of water, of course your reservoir has a very limited capacity; 289,000 acre feet is its capacity: and you waste so much of that water in periods of high [445] run-off that your effective kilowatt generation per acre foot of water actually in storage is really less than in periods of lesser flow. And your own operating experience shows that.

(Testimony of Carl A. Heinze.)

In the extreme variations of run-offs, the efficiency, however, drops down so fast that your actual production in kilowatt hours per acre foot of water passing through the reservoir varies considerably. It all depends on the way your run-off materializes. You can have a low run-off per year, not an extreme low run-off, but say an average low run-off; if it comes right, so that it can be stored and passed out for irrigation purposes about as it comes in, you will get more for kilowatt production that year than you will for the same number of acre feet, but coming to you in one or two fast run-off periods.

The amount of kilowatt hour production depends not only on the total run-off, but on the seasonal distribution of run-off. I took that into account in my studies and dealt with all of those extremes in mind in giving you the averages I have. My study is based upon the averages over this whole period month by month, not in annual averages, but month by month. The last thirty-four years were not evenly distributed, but there is, I think, reason to believe that it would be the same average.

The average income per year from revenue of power during the nine years actual operation of the District, did not equal or come up to the average of some \$467,000 which I gave as the average for the 34 year period.

(Testimony of Carl A. Heinze.)

The period of nine years speaks for itself. Under the same water conditions which were actually measured by the United States Government, if you had operated during those years exactly as you did in these last nine years, this is the production and income that you would have had.

In my opinion, I do not feel that a revenue produced in actual operation for a period of nine years, is a better measure [446] of what the plant may do in the future than an estimate based upon what it would have produced had it been in operation for 34 years in the past, where I used the actual cost of operation as a base for expense.

Redirect Examination

The longer the period in which the average is made, the more accurate and more dependable your answer would be. You have just that many more chances of being right.

Respondents' Exhibit "DD" is a copy of the report made by Mr. Heinze which is set out in the Appendix (p. 890).

Respondents' Exhibit "DD-1" is in the nature of a supplemental report by Mr. Heinze bringing his former report, which is Respondent's Exhibit "DD", down to date, and is set out in the Appendix. (p. 933).

LOUIS C. HILL,

a witness on behalf of respondent, the testimony being taken from the reporter's transcript of the evidence in this court in the matter of Merced Irrigation District, an Irrigation District, debtor, number 3907 in Bankruptcy beginning at page 327, as follows:

Direct Examination

I am Louis C. Hill, of Los Angeles, California. Resided in California since 1912. Prior to that in Arizona, since 1903. Prior to that in Colorado, for about 13 years. And then off and on in Michigan.

I am a consulting engineer; been in personal practice for about 21 years—outside of my regular work with the government, as supervising engineer for 11 years, in charge of the Southern District of the Reclamation Service, which took in five states. I have continued to do consulting work for the [447] government since 1914. I am now occupied in a consulting capacity on many government projects, both by the army and by the Bureau of Reclamation, and a few of them are: The All-American Canal; Hoover Dam; Bonneville; Fort Peck project; Muskingum project, which involves about 12 dams; Tygart in West Virginia; Conchas in New Mexico; besides the All-American Canal and dam. I have also in recent years done consulting work on private projects. I made one trip to Exchequer Dam and made a report on it.

(Testimony of Louis C. Hill.)

I am familiar with the water supply records in California, since records have been kept. I am familiar with the records kept on the Merced River, both by the Geological Survey, and by the estimates shown in Bulletin 5.

I am familiar with the output of Exchequer Dam.

I have made computations as to what would have been produced in money from the sale of power at the Exchequer power plant, had the plant now in operation been in operation for the last 60 years, upon the assumption that the plant is operated at an 80 per cent load factor, the power sold at $4\frac{1}{2}$ mills per kilowatt hour, and was operated primarily for irrigation purposes for the Merced Irrigation District.

The records show that from 1871 to date, the average run-off of this river was 1,045,500 acre feet; and during the last nine years there was about 127 kilowatt hours per acre foot, and during the previous 22 years there was 108 kilowatt hours per acre foot—or an average of the two, that is, weighted average of the two, of $113\frac{1}{2}$ kilowatt hours per acre foot. Multiplying $113\frac{1}{2} \times 1,045,000$ you will get 118,670,000 kilowatt hours, which multiplied by .0045, gives \$534,000 in round numbers per year, on the average. The 127 figure is based upon the actual records of the use made by the

(Testimony of Louis C. Hill.)

District, during the nine years of its existence. My calculations cover about 64 years. I have [448] used the records of State Bulletin No. 5.

In predicting the future it is more dependable to use an average based upon a long period, than one based upon a short period.

In the said period of 64 years, the last nine years shows the lowest average of any consecutive nine years within the period. (reading the periods from 1870 to date).

It is my opinion that looking to the future some 30 or 40 years, the District could reasonably expect the figures to approximate the average figure for the 64 years.

In 1923 the office made a study, which I spot-checked all the way through, covering the years from 1902 to 1921, this report on the Merced River.

Mr. Heinze and I made absolutely independent studies of this river.

During the 22 year period my total was 2,711,000,000 in round numbers, and Mr. Heinze's was about 2,770,000,000, in round numbers. These two reports were made some 12 years apart.

Cross Examination.

In one way, the law of averages does not hold good for any particular one year. The last nine years we have been passing through a dry spell. I found that during the last nine, ten, eleven or

(Testimony of Louis C. Hill.)

twelve years, the run-off was much less than it had been at any other previous time for a comparable time.

Speaking in terms of dry cycles, if a person were to attempt before that dry cycle commenced to predict what the future would be, based on the part, he would not get it right.

I made a study of the power yield of the Exchequer plant in 1924. That was before the Exchequer plant had been built. The purpose of that report was to find out how much this plant should earn if things continued as they were prior to 1924. That is, beginning with 1902 to 1923 inclusive. The assumption which was [449] made in 1924 of what the Exchequer plant would yield in the future did not work out. We have not had time enough to test what it would work out at. If you want to know what the next nine years worked out at, it was less than we had estimated. It did not work out for the nine years of operation. It was less in the nine years than we had estimated—for the nine years of operation. I said the Exchequer plant would have produced on the average, had it been operated since 1871 to date, it would have produced about \$534,000 annually. It would be impossible to get what it would have yielded in each of those years since 1870. But we took the low years when we had 127 kilowatt hours per acre foot produced

(Testimony of Louis C. Hill.)

for nine years, and we had 109 kilowatt hours for the last 22 years, and we take the weighted average of those two, which gives 113½ kilowatt hours, that is the probable average amount that would be produced during this whole 60 years. And I make that as 118,670,000 kilowatt hours, making a total amount of money, of course, of \$533,987.

Q. Well, now, in the report which you rendered it is stated as follows: "It will be noted that the gross power return may be expected to vary from only about \$300,000 to as high as \$700,000 per year, and further that several low years might occur in succession." I am now referring to the report of 1924. I have quoted you correctly, haven't I?

A. As far as I know, yes.

Q. Didn't you predict, based on the experience of the past, that the yield would vary from a minimum of \$300,000 to a maximum of \$700,000 per year?

A. Yes.

Q. All right. Now, based on actual operation of the plant since 1927, is it not a fact that that yield has varied from a minimum of \$95,000 to a maximum of \$602,000?

A. Yes.

Q. So it is a fact, is it not, Mr. Hill, that in that [450] particular case the estimate of the future yield based on the experience of the past did not work out?

A. That is true.

(Testimony of Louis C. Hill.)

Mr. Downey: That is all.

Q. The Court: You assumed, I suppose, in your calculations, that the market for power would continue?

A. No, as a matter of fact, I did not. In one of them I assume that it would continue for the term of the contract, which is 30 years still to run. And if you added a little—if they took in \$477,711 net from the power plant each year, that, in 30 years, would pay the \$8,600,000. But then, of course, you would have to add, if you wanted to, a total of \$32,489 if you used Mr. Heinze's method, which would mean a total gross income of \$508,600, for 30 years, to retire this \$8,600,000.

Respondents' Exhibit "EE" is a copy of the contract for the sale of power made between the petitioner and the San Joaquin Light & Power Company dated February 21, 1924, the pertinent parts of which are set out in the Appendix. (p. 945).

It is agreed by counsel for petitioner that the power contract which is Respondents' Exhibit "EE" has been sustained by court action but there has been no adjudication as to option to renew. The contract has not been renewed but it undoubtedly will be.

Respondents' Exhibit "FF" is a map or graph, being a copy of petitioner's Exhibit No. 24 and

having superimposed thereon lines that would indicate the respondents' theory of the debt situation and is set out or referred to in the Appendix. (p. 946). [451]

Respondents' Exhibit "GG" is a statement of the maturities of principal upon the bonds held by RFC and upon the balance of the bonds not held by RFC, the pertinent parts of which are set out in the Appendix (p. 949).

Respondents' Exhibit "HH" is the approval by the California Districts Securities Commission of the refunding bonds, the pertinent parts of which are set out in the Appendix (p. 949)

Respondents' Exhibit "II" is a map made by Mr. Bedesen, county surveyor of Merced County, showing the lines of Merced Irrigation District and overlapping assessment districts and is summarized in the Appendix (p. 955).

It is stipulated that the original map or plat may be substituted for the copy introduced in evidence, if found necessary or desirable.

Respondents' Exhibit "JJ" is a table showing total acreage of the county, the acreage in Merced Irrigation District, total valuation, tax rate in and out, bonds outstanding in the county, as made for the use of California Districts Securities Commission at the time the commission sanctioned the tax rate under Section 11 of the Securities Commission Act, and is set out in the Appendix (p. 956).

It is stipulated that the table set out in Respondents' Exhibit "JJ" speaks approximately as of the date of the trial of the first federal case.

Respondents' Exhibit "KK" is a statement which was prepared by petitioner as to the bond issues of various improvement districts which are located within or which overlap Merced Irrigation District, and is found at pages 109 to 118, inclusive, of Respondents' Exhibit "OO".

It is stipulated that Respondents' Exhibit "KK" is correct as of the date of the first hearing [452]

It is stipulated that all maturities of principal and interest on bonds of assessment districts overlapping or within Merced Irrigation District, including the county and cities, have all been met.

Respondents' Exhibit "LL" are extracts from report of the Board of Equalization. It is a summary of the reports of 1929-30, 1931-32, 1933-34 and 1935-36, the pertinent parts of which are set out in the Appendix (p. 959).

Respondents' Exhibit "MM" is the petition for debt readjustment filed in the first proceeding in this Court, April 19, 1935, in case number 3907. The exhibit includes all of the exhibits attached to the petition, and commences at page 10 of Respondents' Exhibit "OO".

Respondents' Exhibit "NN" is composed of a summary of the pleadings and proceedings in the first trial in this court, set forth in pages 41 to 54 of Respondents' Exhibit "OO".

It is stipulated that the statement appearing on page 54 of Respondents' Exhibit "OO" is correct, namely, "That said motions of respective parties to dismiss said petition were all duly and regularly presented to the Court, and after consideration by the Court, were jointly and severally denied and exception reserved."

It was admitted that the stipulation with respect to the prior record appearing on pages 7 and 8 of the transcript of the record which is respondents' exhibit "O" for identification was made and filed in the trial court or in the appellate court. [453]

It was also admitted that an agreed statement on appeal was prepared by the parties and signed with the approval of the judge who tried the case, and that that agreed statement was printed as a part of the record in support of petition for certiorari.

Respondents' Exhibit "OO" is the whole record in connection with the appeal, the applications for the orders allowing appeal, both addressed to the trial court and Circuit Court of Appeals, the orders obtained in both courts, and the entire record with respect to the appeal beginning at page 283 and with respect to the disposition of the appeal, all of which is from and including page 283 to 339 of the transcript of the record in the Supreme Court, which is Respondents' Exhibit "O" for identification, in which said Respondents' Exhibit "O" for identification is admitted in evidence as Respondents' Exhibit "OO" and a printed copy thereof as supplied herewith.

(Testimony of Louis C. Hill.)

It was stipulated that it was obvious that only one mass of bonded indebtedness of \$16,190,000 involved in this proceeding was involved in the former proceeding in this court.

It is further conceded that it was stipulated that the various dissenting bondholders owned the bonds which they claimed in their pleadings to own in the other proceeding in this court.

It is further admitted that the bonds, the ownership of which is pleaded in the pleadings in the first case, are the same bonds the ownership of which the respondents plead in this case, except that in this case the respondents plead, in addition, accruing interest upon the bond. [454]

It is further stipulated that the Supreme Court of the United States ruled upon the petition for writ of certiorari in October, 1937.

It is further admitted that in response to citations issued upon the two appeals taken from the first decree in this court that the petitioner's attorneys appeared in the Circuit Court of Appeals and represented petitioner in the proceedings therein made on the motion to submit the cause.

Respondents' Exhibit "PP" is the mandate that was issued by the Clerk of the Circuit Court of Appeals upon the judgment of April 12, 1937, the pertinent parts of which are set out in the Appendix (p. 962).

Respondents' Exhibit "QQ" is the judgment of the United States District Court entered pursuant to the mandate, and is set out in the appendix. (p. 964).

It was admitted by counsel for petitioner that no proceedings have been taken with a view to setting aside the judgment which has gone into evidence as Respondents' Exhibit "QQ".

Respondents' Exhibit "RR" is an extract from Bulletin No. 21 of the Division of Engineering and Drainage being pages 190 to 199, and is set forth commencing at page 118 of Respondents' Exhibit "OO".

Respondents' Exhibit "SS" is a copy of the minutes of the Superior Court of Merced County in the case of Reconstruction Finance Corporation vs. Merced Irrigation District, Number 11604 and is set out in the Appendix (p. 968).

Respondents' Exhibit "TT" is a copy of petition and complaint in intervention of Cogswell Polytechnical College, one of the interveners in the case last referred to, the pertinent parts of which are set out in the Appendix (p. 970). [455]

GEORGE F. COVELL,

a witness on behalf of the respondents, the testimony of whom is taken from the transcript of the prior proceeding in this court, commencing at page 461 of the reporter's transcript, as follows: [456]

GEORGE F. COVELL

called as a witness testified that he is a resident of Modesto, Stanislaus County, and a bondholder in the Merced Irrigation District, having ten bonds; that he had farmed all of his life in fruit, grain, and alfalfa in Merced County, and at the present time in San Joaquin and Stanislaus County. His experience has extended since 1890; and that he was acquainted with the Merced Irrigation District, including the land and farms, in a general way. He had looked at property both for loaning money and to buy; that one time he had bought dried fruits in the district. He is also acquainted with the Palo Verde and Imperial Districts, as well as Oakdale, South San Joaquin, Turlock, Modesto, and West Stanislaus, and that he is familiar with their soils and farms and lands; that he had been a director of the Modesto Irrigation District and participated in financing the same as well as in construction of canals.

Mr. Covell has a ranch in the South San Joaquin Irrigation District which is similar to the lands around Livingston, in the Merced District. He raises walnuts, almonds and grapes. He also has a ranch in the West Stanislaus District, raising apricots, peaches, alfalfa, almonds, beans, and melons. On the whole the lands of the Merced District average up fairly well with these districts. In the light of his experience as a director of the Modesto Irrigation District

(Testimony of George F. Covell.)

gation District and his farming experience and general experience he would say that the Merced District was a good project, but probably not managed properly. In response to a question by the court he stated that it was a feasible project, but may be mismanaged.

Mr. Covell is a bondholder in South San Joaquin, Waterford, West Stanislaus, Turlock, Modesto, and Palo Verde Districts. Before buying his bonds he examined the districts to some extent, based [457] upon his experience and considering the security back of the Merced bonds, he thinks that the District will eventually come out all right, although it may take some little time. [458]

In the report of Dr. Benedict, which is on file here, on page 10, he refers to a document or bulletin called the Financial Settlements of defaulting irrigation enterprises, by Wells A. Hutchins, Associate Irrigation Economist, Division of Agricultural Engineering, Bureau of Public Roads of the United States Department of Agriculture, known as Circular No. 72, dated July 19, 1929, and incorporates some of the conclusions as his own. I desire to read from page 18 into the record here the following sentence:

“Participation of existing farm mortgages is practically indispensable to a satisfactory settlement if, as is so often the case, farm mortgages are common; for a settlement by bond-

(Testimony of George F. Covell.)

holders alone, purporting to be based upon productive power of the lands but ignoring such mortgages, may be wholly nullified by continued presence of heavy private farm debts."

Respondents' Exhibit "UU", is bulletin 21-H of the Division of Water Resources of the Department of Public Works of the State of California, being a report on irrigation districts of California for the year 1936, the pertinent parts of which are set out in the Appendix (p. 971).

On page 16, under Chapter III, Financial Review, appears this statement:

"Disbursal of loan funds were made by eighteen districts to take up portions of old issues that had been deposited in acceptance of compromises agreed upon. Refunding bonds were in most cases not issued. The R.F.C. accepted and held old bonds as security for the loans advanced until practically one hundred per cent of the outstanding issues of the districts had been turned in."

In table 1, table 2 and table 3, referring to statistical data relating to the Merced Irrigation District, and comparing that with statistical data relating to the Turlock [459] Irrigation District, we find, in table 1 under "Capacity, acre feet," for Merced, 289,000, and total acre feet, distribution of water, 498,000. Under Turlock, for the same year, we find

(Testimony of George F. Covell.)

reservoir capacity of 226,000 and distribution 440,000. In table No. 2 we find, under gross area, Merced, 189,000 odd and irrigable area 165,000 odd. Under Turlock we find 181,000 gross odd, that is, I am not giving the exact number, and irrigable area 162,000 odd. In table 3, under the summary of assessments levied, tax certificates sold and so forth, under Merced we find total assessed valuation, \$12,078,000. Under Turlock we find \$13,373,000. We find the rate per \$100 for Merced, \$3, and for Turlock, \$2.76. We find the total assessment levied for Merced as \$342,000. I am just giving the round numbers. And for Turlock we find \$353,000. We find revenues collected in 1936 for water tolls and water and power sales, Merced, \$601,000 and Turlock, \$663,000."

It is stipulated that Merced Irrigation District paid the expenses of the Reconstruction Finance Corporation for appraisal of \$750.00 or thereabout.

Counsel for respondents read into the record a telegram in the nature of a report from Thomas C. Boone, attorney for Oakdale Irrigation District, dated the day it is read and states:

"Oakdale Irrigation District has not delivered its refunding bonds to Reconstruction Finance Corporation stop the Reconstruction Finance Corporation a long time ago requested that refunding bonds be delivered but matters of procedure have caused some delay stop we

(Testimony of J. Alfred Swenson.)

received request from them yesterday to have bonds issued and delivered to them. Thomas C. Boone.”

Respondents' Exhibit “VV” consists of excerpts from the report of the District to Reconstruction Finance Corporation, and is set forth at pages 103 to 105 of Respondents' Exhibit “OO”. [460]

MR. J. ALFRED SWENSON,

a witness on behalf of the respondent, the testimony of whom is taken from the reporter's transcript in this case in the matter of Merced Irrigation District, an Irrigation District, debtor, number 3907 in Bankruptcy, on February 12, 1936, commencing at page 345 as follows.

I am J. Alfred Swenson, of Turlock, California, an attorney.

I have made a study of the refunding bond issue insofar as the amount required to amortize the \$8,600,000 is concerned. I have also made computations and a study of the amount of bond interest and principal required to amortize the present existing loan as shown here on Exhibit 2, of the District. I have also made a comparative study and computation to show the loss of capital investment to the bondholder upon the amount of the face value of his present bond with interest coupons up to

(Testimony of J. Alfred Swenson.)

January 1, 1936. I have also computed the amount of percentage of loss on the bondholders' investment, taking into account the face amount of those coupons and bonds, and the offer of fifty-one plus cents per dollar, and have prepared a chart illustrating same.

I have also examined what is called the Benedict report, which is Petitioner's Exhibit No. 35, in the Merced Irrigation District case. I studied particularly the tables set forth on pages 116 to 123 of that report, wherein are set forth the income and expenses of 26 corporations and individuals operating in the Merced Irrigation District, showing their 1926, 1927 and 1928 business, the acreages, gross income, expenses, net income before taxes, amount of county and Merced Irrigation District taxes, and total operating expenses, and showing the net income after taxes. [461]

I also examined and made computations from the books of the District, and figures obtained from District officials with respect to the amount of the tax levy for bond service which was paid by the taxpayers of that District in the years 1926, 1927 and 1928, and ascertained the percentage of the bond service to the total assessment made by the District in those years.

I also calculated for those same years what the average spread would be if the present proposed refunding bond plan were in effect, \$8,600,000, and the

(Testimony of J. Alfred Swenson.)

amount required to amortize it, which is \$456,000 a year.

I deducted that figure from the proportionate amount required and shown on pages 116 to 123 of the report, and ascertained the percentage that would be saved on taxes levied for bond service for those three years under the new proposed plan, and then calculated the percentage relation of that to the gross operating expenses of those 26 corporations shown in the report, for said years.

I have prepared a chart, which is a graphic illustration showing that if the proposed plan is adopted, the bondholder will suffer a loss on his capital investment of 53.3 per cent, and, that the landowner will thereby benefit to the extent of 7.4 per cent on his yearly operating costs, on the basis of said 3 years figures.

I qualify my results further, in that no assessments were made for bond principal in those years; that the assessments were made entirely for interest. Referring to the chart, Exhibit No. 2, of the Merced Irrigation District, the total assessment goes from \$954,000 to slightly over \$1,250,000. That gives an average assessment for bond principal and interest, for that entire period, of \$1,090,230.50, per year. If that had been taken as the assessment used in the chart, the percentage of benefit to the landowner would have been greater by 3.2 per cent. [462] I used the actual assessment levied in prep-

(Testimony of J. Alfred Swenson.)

aration of my graph. In those three years, 1926, 1927 and 1928, the loss to the bondholder would have been 55.3 per cent, and the gain to the landowner 7.4 per cent.

Respondents' Exhibit "WW" is a chart or graph presented by Mr. Swenson, showing in graphic form the loss to the bondholder and the gain to the landowner in operation expenses, when the proposed plan is put into effect, and is described in the Appendix (p. 973).

Respondents' Exhibit "XX" consists of pages 27, 28 and 29 of Bulletin 21-A, report on Irrigation Districts in California for the year 1929, and is set out in the Appendix (p. 975).

Respondents' Exhibit "YY" consists of extracts from Bulletin 34 published by the State of California, Department of Public Works, Division of Water Resources, entitled "Permissible Annual Charges for irrigation water in upper San Joaquin Valley," and is found at pages 145 to 148 of Respondents' Exhibit "OO".

Respondents' Exhibit "ZZ" consists of pages 26, 27, 28 and 29 and pages 37 and 38 of Bulletin 21-F of Department of Public Works of the State of California, and is set out in the Appendix (p. 979).

Respondents' Exhibit "AAA" consists of excerpts from the United States Department of Agriculture, Bureau of Soils, and is entitled "Reconnaissance Soil Survey of the Lower San Joaquin

Valley, California," the pertinent parts of which are set out in the Appendix (p. 987).

The respondents rested and moved the court for dismissal of the proceedings upon the grounds of the insufficiency of the evidence to sustain the petition, and upon the grounds urged at the beginning of the hearing. The motion was taken under advisement. [463]

Respondents renewed their motion to strike the Benedict report, (Respondents' Exhibit No. 35) upon the ground that it is too remote. The motion was denied.

STIPULATION

It is hereby stipulated that the foregoing constitutes a full, true and correct condensed statement in narrative form of all of the testimony in said cause including admissions, concessions and stipulations of counsel, and designations of exhibits, and also is a correct statement of essential motions, rulings, and proceedings of the court prior to submission of the cause, and as such the same may be designated and used as a part of the record in said cause in lieu of the testimony of witnesses in question and answer form and the setting out at length of admissions, concessions and stipulations of counsel and motions, rulings and proceedings covered.

It is further stipulated that the several exhibits offered by the respective parties and received by the court or pertinent parts thereof may be set forth in an Appendix to the foregoing condensed statement either in the same or a separate volume and that page references to said respective exhibits in the said Appendix may be inserted in the foregoing condensed statement at any time either before or after the same shall have been printed as a part of the record.

Dated this 30th day of June, 1939.

C. RAY ROBINSON

HUGH K. LANDRAM

DOWNEY BRAND & SEYMOUR

STEPHEN W. DOWNEY

Attorneys for Merced Irrigation

District, Appellee. [464]

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[Endorsed]: Filed July 13, 1939. [465]

United States
Circuit Court of Appeals

For the Ninth Circuit. 3

WEST COAST LIFE INSURANCE COMPANY,
a corporation, PACIFIC NATIONAL BANK
OF SAN FRANCISCO, a national banking
association, et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT and RE-
CONSTRUCTION FINANCE CORPORATION,
Appellees.

Transcript of Record

In Four Volumes

VOLUME III

Pages 555 to 1003

(Exhibits)

Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

United States
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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[Title of District Court and Cause.]

APPENDIX TO CONDENSED STATEMENT
IN NARRATIVE FORM OF TESTIMONY [466]

PETITIONER'S EXHIBITS

PETITIONER'S EXHIBIT No. 1

Resolution of Reconstruction Finance Corporation awarding loan dated November 14, 1934, set out in Respondents' Exhibit "OO" at page 155.

PETITIONER'S EXHIBIT No. 2

Resolution of Board of Directors of Merced Irrigation District accepting and agreeing to the terms and conditions of the resolution of the Reconstruction Finance Corporation of Nov. 14, 1934, (Exhibit No. 1 *supra*), dated December 11, 1934, set out in Respondent's Exhibit "OO" at page 180.

PETITIONER'S EXHIBIT No. 3

Resolution of the Board of Directors of the Merced Irrigation District adopting a refunding plan dated Febr. 11, 1935, set out in Respondent's Exhibit "OO" at page 183.

PETITIONER'S EXHIBIT No. 4

Amendment of the Reconstruction Finance Corporation to its resolution of Nov. 14, 1934, set out in Respondents' Exhibit "OO" at page 192.

PETITIONER'S EXHIBIT No. 5

Resolution of Reconstruction Finance Corporation further amending A of paragraph 3, set out in Respondents' Exhibit "OO" at page 193.

PETITIONER'S EXHIBIT No. 6

Resolution of the Board of Directors of the Merced Irrigation District adopting the amendatory resolution of the Reconstruction Finance Corporation, set out in Respondents' Exhibit "OO" at page 194.

PETITIONER'S EXHIBIT No. 7

Resolution of the Board of Directors of Merced Irrigation District accepting further amendatory resolution of the Reconstruction Finance Corporation, set out in Respondents' Exhibit "OO" at page 198. [467]

PETITIONER'S EXHIBIT No. 8

Bond purchase contract dated Sept. 16, 1935, set out in Respondents' Exhibit "OO" at page 202.

PETITIONER'S EXHIBIT No. 9

Agreement between Merced Irrigation District and the Reconstruction Finance Corporation dated August 14, 1935, set out in Respondents' Exhibit "OO" at page 217. [468]

PETITIONER'S EXHIBIT No. 10

was a letter from the Reconstruction Finance Corporation to the Federal Land Bank, dated September 19, 1935, reading as follows: [469]

Reconstruction Finance Corporation
Washington

Sept. 19, 1935

Federal Reserve Bank of San Francisco,
San Francisco, California

Re: Merced Irrigation District
Docket No. Ref. 58
Amount Authorized: \$8,600,000

Gentlemen:

This Corporation has authorized a loan of not to exceed \$8,600,000 for the purpose of enabling Merced Irrigation District of Merced, California, to reduce and refinance its outstanding indebtedness.

Under such authorization we now desire to purchase for each dollar of unpaid principal amount of such bonds.

We are forwarding a copy of this letter to Mr. H. P. Sargent, Secretary of the District, who will make arrangements for delivery of the bonds to be purchased. From time to time but not later than September 30, 1935, you will purchase for our account bonds presented on the following terms and conditions:

- (a) At the time of the first disbursement there must be presented for purchase at least

\$13,761,500 aggregate principal amount of bonds. If a lesser amount is presented, or if more than \$16,190,000 aggregate principal amount is presented, you will refuse to make any disbursement and so advise this Corporation. There may be presented registered bonds of the various issues hereinafter mentioned; any such registered bonds so presented shall be re-registered in the name of Reconstruction Finance Corporation prior to their purchase.

- (b) There may be included bonds designated Merced Irrigation District First Issue—First Division, in a principal amount of not to exceed \$3,060,000 which shall correspond as to form and text with the photostatic copy of bond number 266 marked Exhibit “A” attached hereto, except as to serial number, denomination, maturity date and attached interest coupons. Each such bond shall be of the denomination of \$500 or \$1,000, shall be dated January 1, 1922, and shall bear any serial number from 121 to 3281, both inclusive, and a maturity date of the first day of January in any of the years 1934 to 1950, both inclusive. Each bond shall bear interest at the rate of six per centum (6%) per annum payable semi-annually

on the first day of January and the first day of July. [470]

There may also be included bonds designated Merced Irrigation District, First Issue—Second Division, in a principal amount of not to exceed \$1,800,000 which shall correspond as to form and text with photostatic copy of bond number 4800, marked Exhibit “A-1” attached hereto, except as to serial number, maturity date and attached interest coupons. Each such bond shall be of the denomination of \$1,000, shall be dated January 1, 1922, and shall bear any serial number from 3282 to 5081, both inclusive, and a maturity date of the first day of January in any of the years 1951 to 1953, both inclusive. Each such bond shall bear interest at the rate of five and one-half per centum ($5\frac{1}{2}\%$) per annum payable semiannually on the first day of January and the first day of July.

There may also be included bonds designated Merced Irrigation District, First Issue—Third Division, in a principal amount of not to exceed \$1,320,000, which shall correspond as to form and text with photostatic copy of bond number 6012, marked Exhibit “A-2” attached hereto,

except as to serial number, maturity date and attached interest coupons. Each such bond shall be of the denomination of \$1,000, shall be dated January 1, 1922, and shall bear any serial number from 5082 to 6401, both inclusive, and a maturity date of the first day of January in either of the years 1954 or 1955. Each such bond shall bear interest at the rate of five and one-half per centum ($5\frac{1}{2}\%$) per annum payable semiannually on the first day of January and the first day of July.

There may also be included bonds designated Merced Irrigation District, First Issue—Fourth Division, in a principal amount of not to exceed \$5,760,000, which shall correspond as to form and text with photostatic copy of bond number 7817, marked Exhibit “A-3” attached hereto, except as to serial number, maturity date and attached interest coupons. Each such bond shall be of the denomination of \$1,000, shall be dated January 1, 1922, and shall bear any serial number from 6402 to 12161, both inclusive, and a maturity date of the first day of January in any of the years 1956 to 1962, both inclusive. Each such bond shall bear interest at the rate of six per centum (6%) per annum payable semiannually on the first day of January and the first day of July.

There may also be included bonds designated Merced Irrigation District Second Issue, in a principal amount of not to exceed \$3,250,000, which shall correspond as to form and text with the photostatic copy of bond number B-12, marked Exhibit "A-4" attached hereto, except as to serial number, maturity [471] date and attached interest coupons. Each such bonds shall be of the denomination of \$1,000, shall be dated May 1, 1924, and shall bear any serial number from B-1 to B-3250, both inclusive, and a maturity date of the first day of January in any of the years 1937 to 1964, both inclusive. Each such bond shall bear interest at the rate of six per centum (6%) per annum payable semiannually on the first day of January and the first day of July.

There may also be included bonds designated Merced Irrigation District Third Issue, in a principal amount of not to exceed \$1,000,000, which shall correspond as to form and text with the photostatic copy of bond number C-24, marked Exhibit "A-5" attached hereto, except as to serial number, maturity date and attached interest coupons. Each such bond shall be of the denomination of \$1,000, shall be dated April 1, 1926 and shall bear any serial number from C-1 to C-1000, both

inclusive, and a maturity date of the first day of January in either of the years 1965 or 1966. Each such bond shall bear interest at the rate of five and one-half per centum ($5\frac{1}{2}\%$) per annum payable semiannually on the first day of January and the first day of July.

- (c) There shall be delivered to you two counterparts of a certificate or certificates executed in duplicate by the Treasurer of the District stating that the bonds and coupons are the valid outstanding obligations of the District. Each such certificate shall correspond with Exhibit "B" attached hereto, except that in case of any unpaid coupons are missing from the bonds presented the dates thereof and the numbers of the bonds to which they are appurtenant will be inserted in the blank space left for that purpose. No coupons will accompany bonds registered as to principal and interest, and accordingly the Treasurer's certificate will not list coupons missing from such bonds.
- (d) There shall be delivered to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "C" attached hereto, dated the day of the respective disbursement and executed by the

respective depository covering the bonds delivered by it. Such depositories are: Security-First National Bank of Los Angeles, Bank of America National Trust and Savings Association of Los Angeles, Citizens' National Trust and Savings Bank of Los Angeles, Bank of America National Trust and Savings Association of San Francisco, and Anglo-California Trust Company. The Bank of America National Trust and Savings Association will also deliver to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "C-1" attached hereto, covering \$85,000 principal amount of bonds deposited under a special escrow agreement. [472]

There shall also be delivered to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "D" attached hereto, dated the day of the respective disbursement and executed by the County Treasurer of Merced County, California.

There shall also be delivered to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "E" attached hereto, dated the day of the respective disbursement and executed by a

signing officer of Crocker First National Bank of San Francisco, California.

There shall also be delivered to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "F" attached hereto, dated the day of the respective disbursement and executed by a signing officer of the St. Louis Union Trust Company, St. Louis, Missouri. The signature on each of the counterparts shall be certified to by an officer of a bank or trust company which is a member of the Federal Reserve System in your district, or you may accept signatures when certified to by a signing officer of a bank or trust company which is a member of any Federal Reserve district, in which event an officer of a branch bank or the parent bank of such district shall in turn certify to signatures of officers of its member banks.

There shall also be delivered to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "G" attached hereto, dated the day of the respective disbursement and executed by a signing officer of the Capital National Bank of Sacramento, Sacramento California.

There shall also be delivered to you two counterparts of a Memorandum of Sale and Receipt in the form of Exhibit "H" attached hereto, dated the day of the respective disbursement and executed by Mary J. F. Young and D. M. Young.

Each such Memorandum above referred to shall acknowledge receipt of the aggregate amount received by the respective signer on the day of the respective disbursement in payment for the bonds and the appurtenant coupons, and in addition thereto shall acknowledge receipt in full of payment by the District of interest at the rate of four per centum (4%) per annum on the purchase price of such securities, to which the respective holder is entitled.

The signatures on each of the documents (other than the Memorandum of Sale and Receipt delivered by St. Louis Union Trust Company) required by paragraphs (c) and (d) shall be certified to by an officer [473] of a bank or trust company which is a member of the Federal Reserve system in your district.

Upon receipt of the foregoing documents, you will check the genuineness of the bonds presented by comparing the form, text and signatures of each of them with the form, text and signatures of a bond of the same issue as indicated by Exhibits

“A”, “A-1”, “A-2”, “A-3”, “A-4” or “A-5”. You will also check the genuineness of the seal on each bond by comparing the same with the seal of the District impressed upon the certificates attached to such exhibits.

Upon being satisfied that the bonds and accompanying documents delivered to you comply with the foregoing requirements, you will make payment for the bonds which are so delivered by checks drawn on this Corporation's account with the Treasurer of the United States, Symbol 93-300, payable respectively to the order of “Security-First National Bank of Los Angeles, as Depositary”, “Bank of America National Trust and Savings Association of Los Angeles, as Depositary”, “Citizens' National Trust and Savings Bank of Los Angeles, as Depositary”, “Bank of America National Trust and Savings Association of San Francisco, as Depositary”, “Anglo-California Trust Company, as Depositary”, “Crocker First National Bank of San Francisco, California, as Depositary”, “St. Louis Union Trust Company at St. Louis, Missouri, as Depositary”, “Capital National Bank of Sacramento, California, as Depositary”, “County Treasurer of Merced County, California” and “Mary J. F. Young and D. M. Young”. The amounts of such checks shall be computed upon the basis of 51.501 cents for each dollar of unpaid principal amount of bonds presented by the respective payees, less deductions on

account of missing unpaid coupons as hereinafter provided.

No payment shall be made on account of interest coupons accompanying the bonds. If any coupons are missing which fell due on or before July 1, 1934, and it appears from the Treasurer's certificate in the form of Exhibit "B" that said coupons have not been paid, then a deduction at the rate of 44.78 cents for each dollar of the face amount of such missing coupons shall be made from the payment for the respective bonds. Deductions shall be made for the full face amount of coupons falling due after July 1, 1934, where it appears from said Treasurer's certificate that such coupons are unpaid. However, no deductions shall be made on account of coupons missing from bonds registered as to principal and interest.

If, however, bonds are presented from which more than a total aggregate principal amount of \$3,000 of required appurtenant interest coupons is unpaid and missing, you will refuse to make any disbursement and so advise this Corporation. [474]

If any deductions are made on account of missing coupons as above directed, and the coupons on account of which such deductions are made are later, but on or before September 30, 1935, presented to you, you will accept the same and make payment therefor in the manner above provided for our account in amounts equal to the deductions which are made on account thereof.

We request that upon making the purchase of the bonds you hold the bonds and one copy of each of the documents received as custodian for this Corporation. We also request that you forward to us Exhibits "B" to "H", both inclusive, and one copy of each of the documents received together with a statement showing the serial numbers of the bonds purchased and the amount disbursed in payment therefor.

As the District proposes to refund these purchased bonds within a short time, you will not present the bonds for payment unless further instructed. However, in order to collect interest on the amount disbursed, on the first day of January and the first day of July of each year you should present for payment in accordance with their terms matured bond interest coupons of the earliest maturity dates in face amount as nearly as possible equal to, but in no event less than interest at four per centum (4%) per annum upon the aggregate amount disbursed pursuant to this letter. The amount collected on account of such coupons should exactly equal the amount of such interest. If a partial payment on one of such coupons is necessitated, a credit in the amount of such payment should be endorsed on such coupon and it should be retained by you until fully paid. At least ten days prior to each of the aforesaid dates, you should forward to the Treasurer of Merced Irrigation District, Merced, California, a

statement generally describing such coupons to be presented and the amount to be collected thereon, referring to any credit upon one of such coupons which might be necessary as aforesaid.

Very truly yours,

(Signed) H. A. MULLIGAN

Treasurer

JJW:hc

CC to:

Mr. H. P. Sargent,

Secretary, Merced Irrigation District,

Merced, California

Messrs. Orrick, Palmer and Dahlquist,

Financial Center Building,

San Francisco, California

and others. [475]

Note:

Exhibits "A", "A-1", "A-2", "A-3", "A-4", and "A-5" all referred to photostatic copies of the bonds of the various issues and divisions. These were not forwarded to the Merced Irrigation District but to the Federal Reserve Bank of San Francisco, California. [476]

EXHIBIT "B"

TREASURER'S CERTIFICATE

I, _____, Treasurer of Merced Irrigation District, of Merced, California, do hereby certify that I am acquainted with the form, serial numbers and maturity dates of the outstanding bonds of the District.

I further certify that I have this day individually examined the bonds of the issues dated _____ this day purchased by Reconstruction Finance Corporation through the Federal Reserve Bank of San Francisco, and that each bond and coupon so purchased is a valid outstanding obligation of said District, that the signatures thereon are the true and genuine signatures of the officers duly authorized and acting at the time of the execution of the bonds, and that no payment of principal has been made on account thereof by said District unless so indicated by endorsement on the respective bond.

I further certify that the seal impressed on said bonds was at the time of the execution of the bonds and still is the true and genuine seal of the District, and that a true impression of said seal has been impressed upon this certificate.

I further certify that each of the said bonds (except bonds registered as to principal and interest) is accompanied by all of the unpaid coupons appurtenant thereto, except as indicated as follows:

Bond Numbers Dates of Unpaid Coupons
not attached

Given under my hand and seal of office this
day of 19.....

(Seal)

Treasurer of Merced Irrigation District
of Merced, California

I hereby certify that the signature of
..... is true and genuine and that I know
said and know him to be
Treasurer of Merced Irrigation District of Merced,
California.

.....
(Signature

Of

Member of Federal Reserve
System. [477]

—
The Memoranda of Sale and Receipts were all
in substantially the following form: [478]

EXHIBIT C

Re Merced Irrigation District

MEMORANDUM OF SALE AND RECEIPT

The undersigned hereby unconditionally sells,
assigns, transfers and delivers unto Reconstruction
Finance Corporation, its successors and assigns, the
securities and appurtenant coupons (if any) of

the above District, which are described in the attached schedule, and all rights upon and in connection with the same, and acknowledges receipt of the sum of \$..... in full payment therefor, and in addition thereto, the District has paid to the undersigned the sum of \$....., receipt of which is hereby acknowledged, in full settlement of interest at the rate of 4% per annum on the purchase price of such securities, as provided in the Resolution of the Reconstruction Finance Corporation authorizing a loan to the above District and in accordance with the "Cash Offer Plan" hereto attached.

This transfer and assignment is without recourse on, and without warranty, either expressed or implied, by in

(bank)

The securities and appurtenant coupons (if any) of the above District which are described in the attached schedule were and are deposited with the undersigned pursuant to executed Powers of Attorney and other documents in the form of those hereto attached which do not contain any qualifications as to ownership or limitations upon the power of the depositors to deposit and sell the same for the purpose herein mentioned, except as otherwise indicated in said schedule.

The undersigned proposes to distribute the proceeds of this sale to the creditors of the above District, who have deposited securities with the

undersigned, in amounts and manner as contemplated by the resolution of Reconstruction Finance Corporation authorizing a loan to said District, without any deductions whatsoever, except an amount not to exceed \$..... on account of fees and expenses for the undersigned and the Committee representing creditors of the above District. It is understood and agreed, however, that Reconstruction Finance Corporation shall be under no duty to see to the application or disbursement of such proceeds by the undersigned, and shall under no circumstances be under any liability for any matter connected with such application or disbursement.

In witness whereof, the undersigned has caused this Memorandum of Sale and Receipt to be executed by its officers thereunto duly authorized as of this day of, 193....

.....
bank

By
(signature) (title)

and
(signature) (title)

I hereby certify that the genuine signatures of the above indicated officers of appear above.

.....
(signature) (title)

Of

Member of Federal Reserve
System

Note: Signing banks which are members of the Federal Reserve System and are located in the Reserve District where the loan is to be closed are not required to have the signatures of their officers certified to. [479]

Attached to said form of memoranda was a copy of the "cash offer plan" as set forth in Petitioner's Exhibit No. 13. [See page 586] [480]

PETITIONER'S EXHIBIT NO. 11

This exhibit consisted of photostatic copies of Memoranda of Sales executed by the depositaries and others in substantially the form of Memorandum of Sale attached to Exhibit No. 10.

The total of bonds covered by the bills of sale set forth in Exhibit 11 is \$14,071,000.00 principal amount and the amount paid out by the Federal Reserve Bank at the rate of \$515.01 for each \$1000 bond was \$7,245,917.64, the detail of which is as follows:

	Amount of Receipt
Executed by	
The Anglo-California National Bank of San Francisco	\$ 736,206.80
Bank of America, N. T. & S. A.....	221,944.69
Bank of America, N. T. & S. A.....	3,366,228.52
Bank of America, N. T. & S. A.....	43,775.85
The Capital National Bank of Sacra- mento	52,531.02

Citizens National Trust & Savings Bank, Los Angeles.....	1,051,254.57
Crocker First National Bank of San Francisco	360,507.00
Security-First National Bank of Los Angeles	1,371,238.37
St. Louis Union Trust Company.....	3,605.07
G. W. Kirby, County Treasurer of Merced County	23,175.45
Mary J. F. Young and D. M. Young.....	15,450.30
	<hr/>
	\$7,245,917.64

Attached to the bills of sale executed by the depositories for the Bondholders' Protective Committee, to-wit,

The Anglo-California National Bank of San Francisco, 1 Sansome Street;

Bank of America, National Trust and Savings Association, 485 California Street, San Francisco;

Bank of America National Trust and Savings Association, 660 South Spring Street, Los Angeles;

Security-First National Bank of Los Angeles, Sixth and Spring Streets,

Bank of America National Trust and Savings Association, Eighth and J Streets, Sacramento; and

The Capital National Bank,
Seventh and J Streets, Sacramento,

is a copy of the Cash Offer Plan as set forth in Exhibit No. 13. There was also attached copy of the deposit agreement dated March 1, 1932, under which the Bondholders' Protective Committee accepted deposit of bonds prior to adoption by it of the Cash Offer Plan. [481] Sections 1, 3, 4, 5 and 7 of Article III of said Deposit Agreement of March 1, 1932 are as follows:

Section 1. The Committee is hereby given full power and authority, if and whenever in its judgment it shall be advised so to do, to prepare and adopt (either alone or in cooperation with any creditors of said District or any committee or other persons representing any bonds or other evidences of indebtedness of said District) a plan and agreement, or plans and agreements, for the readjustment or liquidation of the indebtedness of said District or any part thereof or for the enforcement of the rights of the owners of deposited bonds and of such creditors and/or of the holders of such bonds or evidences of indebtedness against said District or against the properties which are subject to the assessment lien securing the deposited bonds; or the Committee may approve, adopt or unite in any such plan and agreement for readjustment, liquidation, sale or enforcement, although such plan and agreement be not prepared by it. The Committee in its uncontrolled discretion pursuant to any such plan and agreement, may exchange any or all of the deposited bonds and/or coupons of any or all of the various issues or surrender the same in ex-

change for refunding bonds or other obligations; it may demand, collect and receive any and all amounts of cash, bonds or other securities or other property that at any time may be payable or receivable upon or in respect of any of the deposited bonds of any issue, whether for principal and interest and whether upon the readjustment of the indebtedness of said District or upon the disposition of properties upon sale to enforce the above mentioned assessment lien and may distribute the same pro rata among the Depositors, subject to the provisions, limitations and restrictions contained in this Agreement and in accordance with such reasonable regulations as the Committee may prescribe.

Section 3. Whenever the Committee shall have prepared [482] and adopted or shall have approved any plan and agreement of readjustment or liquidation of the indebtedness of said District or any part thereof, or either with or without any such plan and agreement, shall have determined to sell all or any part of the deposited bonds and coupons of any or all of the issues (except for an amount at least equal to their face amount and accrued interest) and other securities or property held for the account or benefit of the deposited bonds and coupons of the issue or issues so determined to be sold, a copy of such plan and agreement or a statement of such proposed sale shall be lodged with each of the Depositories, and thereupon notice of the fact of such adoption or approval and lodging of such plan

and agreement or of the fact of such proposed sale shall be given by the Committee, by mailing written notice thereof to the Depositors at their respective addresses as they appear upon the books kept by the Depositaries. The Committee may also give such additional notice by publication thereof in such newspapers and for such time as it deems advisable and the Committee, in its discretion, may also cause such notice to be both published and mailed; but neither failure to make such publication nor any defect or irregularity thereof shall impair the validity of said notice. The mailing of such notice shall be conclusive notice to all Depositors as of the date of mailing thereof of such adoption or approval and of the lodging with the Depositaries of any such plan and agreement or of such proposed sale and of the terms thereof, as the case may be, with like force and effect as if such notice had been on said date personally delivered to each of the Depositors, whether or not such Depositors, or any of them, shall have actually received such notice. An Affidavit made before a Notary Public by the Secretary of the Committee or by an officer or employee of any Depositary with respect to the publication or mailing of the notices herein provided for shall be conclusive evidence of the giving of such notice as [483] set forth in such affidavit. For all purposes of this Agreement, the date of mailing of any notice shall be conclusively deemed to be the date on which such notice is deposited in a mail box, building mail chute,

mail bag, or any post office, or branch thereof. In accordance with such notice the Committee may provide for closing the books for transfer of certificates of deposit issued hereunder as hereinbefore provided.

Section 4. Any Depositor, within the period of thirty days beginning on the date of mailing of such notice, (but in no event prior to such date of mailing nor after the termination of said thirty-day period, except as otherwise hereinafter provided) may withdraw from this Agreement upon surrender of his certificate of deposit properly endorsed in blank to the Depositary which issued his certificate of deposit, and upon paying to said Depositary for the Committee such amount as the Committee, in its sole and uncontrolled discretion, may fix as his pro rata share of the expenses of the Committee to the date of such withdrawal and, at the election of the Committee, such amount as the Committee, in its sole and uncontrolled discretion, may fix as his pro rata share of all the advances and liabilities of the Committee to such date (but not in excess of the limitation herein prescribed); and thereupon such withdrawing Depositor shall be entitled to the delivery of bonds or coupons of the same issue and maturity date and of a principal amount equal to those represented by such certificate of deposit (less any coupons which have been detached and paid and less any distributions which have been made upon the principal of said bonds) or the pro rata share, as determined by

the Committee apportionable thereto, of the proceeds of, or substitutes of such bonds then held hereunder. Depositors so withdrawing shall, upon such withdrawal and without any further act, be fully relieved from the obligations of this Agreement and cease to have any rights hereunder. Depositors who fail to withdraw in the manner aforesaid [484] within said period of thirty days shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal hereby given to them, and such plan and agreement or sale shall be binding upon all Depositors who shall not have so withdrawn, all of whom shall be conclusively and finally deemed for all purposes to have assented to such plan and agreement or sale and the terms thereof, whether they receive actual notice or not, and shall be irrevocable bound by the same. No Depositor shall at any time have the right to withdraw from participation in this Agreement except in the events and upon the terms specified in this Agreement.

Section 5. As to any bonds or coupons assenting as provided in Section 4 of this Article III, the Committee shall be fully authorized to carry out such plan and agreement or to effect such sale, and for that purpose shall have full power and authority to transfer, convey and deliver or deposit under said plan and agreement or otherwise use and deal with the deposited bonds and coupons or any money or securities or other property held by it hereunder or under such plan and agreement, and the rights of the Depositors shall be only such

as may be conferred by such plan and agreement or as shall be fixed by the terms of such sale, and shall be subject to compliance with such terms and conditions as such plan and agreement may impose or as the terms of such sale may prescribe, as conditions of participation in such plan and agreement or in such sale and in the benefits thereof; and the Committee shall be fully protected in acting upon the faith of any such notice and assent. The Committee shall be the sole and final judge as to when and whether sufficient assents to any plan and agreement have been obtained and as to whether other circumstances and conditions warrant declaring such plan and agreement operative or effective. Whenever such plan and agreement is referred to herein, it shall be deemed to include any modification of the plan and agreement or any new plan and agreement prepared and adopted or [485] approved as herein provided.

Section 7. The Committee may, if it so desires, give notice in the manner provided in Section 3 of this Article III of its determination to take any action of any kind or character whatsoever, and the mailing of such notice shall be conclusive notice to all Depositors, as of the date of mailing thereof as the case may be, of such determination. If such notice be given, any depositor at any time within thirty days after the date of mailing, (but in no event prior to such date of mailing nor after the termination of said thirty-day period, except as otherwise provided herein) may withdraw from this

Agreement, in the manner and with the effect specified in Section 4 of this Article III with respect to withdrawals from this Agreement in the case of the adoption of a plan and agreement. The Depositors who shall not so withdraw in the manner aforesaid within such period of thirty days shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal given to them and shall be irrevocably bound and concluded by all such acts and determinations of the Committee, whether or not such Depositors received actual notice thereof.

Attached to the bill of sale given by the County Treasurer of Merced County is a resolution of the Board of Supervisors of Merced County dated August 5, 1935, authorizing the County Treasurer to sell and deliver Merced Irrigation District bonds to Reconstruction Finance Corporation pursuant to Cash Offer Plan.

Attached to the bill of sale given by Crocker First National Bank of San Francisco was consent signed by Carrie L. Dallas reciting that she was the owner of all bonds transferred by said bill of sale and further reciting: "I hereby agree that I will immediately instruct said Crocker First National Bank of San Francisco to deliver said bonds to said Merced Irrigation District or to Reconstruction Finance Corporation or to any agency of the [486] United States entitled thereto in accordance with said plan of readjustment." (Cash Offer Plan)

Attached also to bill of sale given by the Bank of America, National Trust and Savings Association, transferring bonds of the State Compensation Insurance Fund, said bonds being in the total sum of \$85,000.00 principal amount, is a resolution of the State Compensation Insurance Fund authorizing the deposit of its bonds under said Cash Plan, and there is also attached agreement by C. B. Day, as Manager, consenting that they be sold "to the Merced Irrigation District or the Reconstruction Finance Corporation or other agency of the United States Government * * * for the sum of \$515.01 flat net for each \$1000.00 par value of the bonds." [487]

PETITIONER'S EXHIBIT NO. 12

was Letter of Transmittal and Acceptance of Cash Offer Plan, as follows:

(Your signature below constitutes an acceptance in writing of the terms and conditions of the Cash Offer Plan dated February 1, 1935, pursuant to which your bonds may be purchased by the Reconstruction Finance Corporation.)

Merced Irrigation District

LETTER OF TRANSMITTAL AND
ACCEPTANCE OF CASH OFFER PLAN

Date

The Anglo California National Bank
of San Francisco,
No. 1 Sansome Street,
San Francisco, California.

Bank of America National Trust
and Savings Association,
485 California Street,
San Francisco, California.

Bank of America National Trust
and Savings Association,
660 South Spring Street,
Los Angeles, California.

Citizens National Trust & Savings Bank
of Los Angeles,
457 South Spring Street,
Los Angeles, California.

Security-First National Bank of Los Angeles,
Sixth and Spring Streets,
Los Angeles, California.

Bank of America National Trust
and Savings Association,
Eighth and J Streets,
Sacramento, California.

The Capital National Bank of Sacramento,
Seventh and J Streets,
Sacramento, California.

The undersigned herewith deposits the bonds of Merced Irrigation District listed below, having the coupons specified below and all subsequent coupons attached, viz:

Issue No.—
Div. No.—
Bond Numbers—
Denominations—
Maturities—
Coupons— [488]

Such bonds are delivered to you as Depositary and are deposited subject to and for the uses and purposes stated in the Cash Offer Plan dated February 1, 1935, adopted by Merced Irrigation District Bondholders Protective Committee constituted under Deposit Agreement, dated March 1, 1932, copies of each of which are on file with you as such Depositary. The undersigned hereby consents and agrees to said Cash Offer Plan and accepts the same and hereby agrees to the sale of said bonds to the Reconstruction Finance Corporation, all as in said Cash Offer Plan provided. Please issue and deliver *certificate(s) of deposit under the afore-said Cash Offer Plan and Deposit Agreement, in the following name:

Name

.....,

(Signature) [489]

PETITIONER'S EXHIBIT NO. 13

was a letter from the Committee to the bondholders, dated Febr. 15, 1935, as follows:

To the Holders of Bonds of Merced Irrigation District:

Under date of January 7, 1935, you were advised by the undersigned Bondholders' Protective Committee that the Reconstruction Finance Corporation had approved the District's application for a loan. The Committee desires to advise you of the result of the questionnaire submitted with said letter, which is as follows:

Number of Questionnaires

Returned	Amount
658 in favor of R.F.C. Cash Offer representing	\$10,431,000
141 in favor of Refunding Plan representing	1,575,000
58 No preference representing.....	590,000
<hr/> 857	<hr/> \$12,596,000

Following the receipt of the questionnaire, the Committee has given very careful consideration to the course which should be followed in the best interests of the bondholders. In view of the result of the questionnaire the Committee, by appropriate majority action, for the purpose of consenting to and accepting the plan of refinancing contemplated by the Reconstruction Finance Corporation, has

formally adopted a Cash Offer Plan pursuant to the terms of the Merced Irrigation District Deposit Agreement dated March 1, 1932. The terms and conditions of said Cash Offer Plan are set forth below and notice of the adoption of said Cash Offer Plan is hereby given.

BONDHOLDERS WHOSE BONDS ARE NOW ON DEPOSIT WITH THE COMMITTEE AND WHO DESIRE TO ACCEPT AND APPROVE THE CASH OFFER PLAN NEED TAKE NO ACTION. By leaving their bonds on deposit with this Committee such bondholders will be deemed to have accepted and consented to the offer of the Reconstruction Finance Corporation as embodied in said Cash Offer Plan.

BONDHOLDERS WHOSE BONDS ARE NOW ON DEPOSIT WITH THE COMMITTEE, BUT WHO DO NOT APPROVE THE CASH OFFER PLAN, may withdraw their bonds from the Deposit Agreement within the period of thirty days from the date of mailing of this notice, upon surrender of the certificate or certificates of deposit which they hold properly endorsed in blank to the depository which issued such certificate or certificates of deposit, and upon payment to said depository for the Committee the sum of \$9.18 for each \$1000 bond, being the pro rata share of all advances and liabilities of the Committee to date. Bondholders so withdrawing, shall, on such withdrawal, cease to have any rights under said Deposit

Agreement. Bondholders who fail to withdraw in the manner prescribed in said Deposit Agreement shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal under said Deposit Agreement, and said Cash Offer Plan shall be binding upon all depositing bondholders who shall not have so withdrawn, all of whom shall be conclusively and irrevocably bound by said Cash Offer Plan.

BONDHOLDERS WHO HAVE NOT HERETOFORE DEPOSITED THEIR BONDS WITH THE COMMITTEE, BUT WHO DESIRE TO ACCEPT SAID CASH OFFER PLAN, may do so by depositing their bonds with any of the depositaries named in said Cash Offer Plan accompanied by the [490] enclosed Letter of Transmittal duly executed.

The Merced Irrigation District has agreed to pay all expenses in connection with the carrying out of said Cash Offer Plan and, accordingly, if said Plan is carried out, neither bondholders who have heretofore deposited bonds under the Deposit Agreement nor bondholders who now deposit their bonds thereunder, pursuant to the terms of said Cash Offer Plan, should be subject to any costs or expenses, unless the District shall fail to pay such costs and expenses, in which event the total amount of expenses which may be chargeable to deposited bonds shall not exceed 2% of the face value thereof, subject to the terms of said Deposit Agreement.

CASH OFFER PLAN

The Reconstruction Finance Corporation, by resolution adopted November 14, 1934, has granted a loan to the Merced Irrigation District to enable the District to refinance and refund its present outstanding bonded indebtedness. The amount of the loan is sufficient to enable the holders of the present outstanding bonds to receive \$515.01 for each \$1000 bond, together with interest at the rate of 4% per annum upon said liquidating price of said bonds from the date said bonds are deposited so as to be made available for refinancing under the resolution of the Reconstruction Finance Corporation until the consummation of the loan as provided in said resolution of the Reconstruction Finance Corporation. To evidence the loan, the District will authorize a new issue of refunding bonds in face amount equal to the loan to be delivered to the Reconstruction Finance Corporation, if and when the holders of the outstanding bonds of the District agree to the terms and conditions of the loan. It is contemplated, upon the approval of the holders of the outstanding bonds, that the Reconstruction Finance Corporation will purchase the present outstanding bonds on the basis set forth in the resolution granting the loan, and thereupon exchange the bonds so purchased by it for the new issue of refunding bonds of the District, to the end that the District will be able to reduce its outstanding bonded indebtedness to the amount of approximately \$8,600,000, bearing interest at 4% per annum, such refunding

bonds to be delivered to the Reconstruction Finance Corporation. In order to effect the refinancing and reduction of the outstanding indebtedness of the District, it is accordingly necessary that substantially all of the present outstanding bonds of the District be delivered to or for the account of the Reconstruction Finance Corporation at the price of \$515.01 for each \$1000 bond and interest as provided in said resolution of the Reconstruction Finance Corporation. Accordingly, the following plan for the readjustment of the indebtedness of the Merced Irrigation District is hereby adopted by the Merced Irrigation District Bondholders' Protective Committee, pursuant to the provisions of the Deposit Agreement dated March 1, 1932, to wit:

1. **Sale of Bonds.** The present outstanding bonds of the Merced Irrigation District shall be sold to the Reconstruction Finance Corporation or any agency of the United States Government, or to the Merced Irrigation District or any agent appointed or [491] approved by it, at the price of \$515.01 for each \$1000 principal amount of said bonds, in accordance with the resolution of the Reconstruction Finance Corporation adopted November 14, 1934 (Docket No. Ref. 58).

2. **Interest.** The purchase price of \$515.01 for each \$1000 bond will be made only upon deposit of such bonds accompanied by all interest coupons due July 1, 1933, and all subsequent coupons, and no payment shall be made on account of any such

coupons. All coupons due prior to July 1, 1933, and now unpaid shall be paid by the District. Interest on said purchase price at the rate of 4% per annum shall be paid from the date of the deposit by the holder of any of said bonds under this Cash Offer Plan to the date of consummation of said loan as provided in said resolution of the Reconstruction Finance Corporation. The date of deposit under this Cash Offer Plan shall be deemed to be the effective date upon which the Division Chief of the Reconstruction Finance Corporation shall be notified thereof in such manner and form as may satisfy him that said bonds are available for refinancing under said resolution of the Reconstruction Finance Corporation. The date of consummation of said loan shall be deemed to be the date upon which funds are transferred by the Reconstruction Finance Corporation to the paying or disbursing agent of said Reconstruction Finance Corporation. All payments on account of both principal and interest will be made only if the Cash Offer Plan becomes effective by actual transfer of funds by or through the Reconstruction Finance Corporation.

3. Powers of the Committee. In lieu of the powers granted to the Committee pursuant to the provisions of Article II of the Deposit Agreement dated March 1, 1932, the Committee shall have and exercise only such powers as may be necessary to carry out this Cash Offer Plan, and to that end the Committee is authorized to receive all moneys payable in respect to the purchase price of deposited

bonds and to receipt for the same; to surrender the deposited bonds and coupons upon payment thereof to the Reconstruction Finance Corporation or to any agency of the United States Government or to the District or any other person, firm or corporation authorized to receive the same; and to do any and all other acts and things necessary to enable the District to effect a reduction in its indebtedness to the extent and in the manner contemplated by said resolution of the Reconstruction Finance Corporation granting said loan; and otherwise to do and perform all acts and things required by the Reconstruction Finance Corporation or any agency of the United States Government to be done for the purpose of effecting the sale of said bonds as in said resolution of the Reconstruction Finance Corporation provided; and also, to distribute to the persons entitled thereto the purchase price to be paid for said bonds. The Committee shall also have and exercise all rights and powers herein specially granted including the power to act as exclusive agent and attorney in fact of the bondholders for the purpose of carrying out this Cash Offer Plan. Said Committee shall not be obligated to collect the principal or interest appurtenant to any of said bonds or otherwise take any action in respect thereof, other than to carry out the terms and conditions of this Cash Offer Plan. Bondholders who deposit their bonds with the Committee under this Cash Offer Plan and depositors who fail to with-

draw from the Deposit Agreement within the time and under the conditions therein prescribed will be bound by and conclusively deemed to have consented to this Cash Offer Plan and to the sale of their bonds to the Reconstruction Finance Corporation as herein provided, and the Committee will be fully authorized to effect such sale. [492]

4. Federal Bankruptcy Proceedings. The Committee is hereby authorized as the agent and attorney in fact of the depositing bondholders to consent in writing to the terms and conditions of this Cash Offer Plan in any proceedings now or hereafter instituted by the District pursuant to the provisions of Section 80 of the Federal Bankruptcy Act, as amended, and to file in any such proceedings the written assent to said Cash Offer Plan for and on behalf of the holders of said bonds and as their agent and attorney in fact hereby irrevocably appointed for that purpose.

5. Termination of Plan. This Cash Offer Plan shall terminate on March 1, 1936, unless prior to that date funds shall have been made available for the purchase of said bonds by the Reconstruction Finance Corporation; subject, however, to any extension thereof and to the conditions of Article IV of said Deposit Agreement with respect to notice and the right of withdrawal therein provided.

6. Expenses. The District has agreed to pay all of the expenses of the Committee in carrying out this Cash Offer Plan, including all expenses heretofore incurred by the Committee. Accordingly, de-

positing bondholders should not be subject to any expenses in connection herewith, except to the extent, if any, that the District shall have failed to pay such expenses, in which event no personal liability will exist upon the depositing bondholders and the maximum expenses chargeable to the deposited bonds will not exceed 2% of the face amount thereof, as provided in the Deposit Agreement.

7. Operation of Plan. This Cash Offer Plan will become operative when sufficient deposits of bonds have been made hereunder to enable the Reconstruction Finance Corporation to purchase the same. If the Cash Offer Plan fails of accomplishment, notice will be given to all depositing bondholders and they will be accorded the right of withdrawal in the manner provided in the Deposit Agreement.

8. Deposit Agreement. This Cash Offer Plan is submitted pursuant to the terms of the Deposit Agreement dated March 1, 1932, to which Deposit Agreement depositing bondholders will become parties in the manner therein provided and all of the terms of said Deposit Agreement shall be deemed to be a part of this Cash Offer Plan, with the same effect as though each and every provision thereof had been embodied herein, and said Deposit Agreement and this Cash Offer Plan shall be read as parts of one and the same instrument. In the event, however, of any conflict between the provisions of this Cash Offer Plan and said Deposit Agreement, the provisions of this Cash Offer Plan shall control

and the Deposit Agreement shall be deemed to have been amended accordingly.

9. Depositories. Each of the following banks is hereby named as a depository under this Cash Offer Plan and said Deposit Agreement, and shall have all of the rights, powers and privileges designated in said Deposit Agreement, to wit:

San Francisco

The Anglo-California National Bank
of San Francisco,

No. 1 Sansome Street,

Bank of America National Trust and
Savings Association,
485 California Street, [493]

Los Angeles

Bank of America National Trust and
Savings Association,
660 South Spring Street,

Citizens National Trust and Savings Bank,
457 South Spring Street,

Security-First National Bank of Los Angeles,
Sixth and Spring Streets,

Sacramento

Bank of America National Trust and
Savings Association,
Eighth and J Streets,

The Capital National Bank,
Seventh and J Streets.

10. Statements and Estimates. No statement or estimate contained in this Cash Offer Plan or accompanying the same is intended as or is to be construed as a warranty or representation of the Committee or as a condition of deposit or assurance under the Cash Offer Plan, all such statements and estimates having been taken from sources which the Committee deems reliable but which it obviously is in no position to guarantee, and no defect or error in any such statements or estimates shall release any depositor under the Cash Offer Plan or the Deposit Agreement. Under no circumstances shall the Committee or the Reconstruction Finance Corporation or the District be bound by any interpretation or lack of interpretation of the resolution of the Reconstruction Finance Corporation adopted November 14, 1934, granting the loan to said District as set forth or referred to in this Cash Offer Plan or in any document accompanying the same. All bondholders are hereby referred to the terms and conditions of the resolution of the Reconstruction Finance Corporation on file in the offices of the secretaries of this Committee and also in the office of the secretary of the District for more particular and definite description of the terms and conditions of said resolution of the Reconstruction Finance Corporation granting said loan to the Merced Irrigation District. [494]

PETITIONER'S EXHIBIT NO. 14

This was the judgment roll in an action validating the refunding bonds pursuant to the terms and provisions of the California Irrigation Districts Act and the following excerpts are taken or summarized from the judgment rendered in said action, to-wit:

Filed this 24th day of Dec. 1935. P. J. Thornton,
County Clerk. By Myrtle Oliver, Deputy.

In the Superior Court of the State of California
in and for the County of Merced.

No. 10841

In the matter of the validation of Refunding Bonds
of MERCED IRRIGATION DISTRICT of
the aggregate par value of \$8,600,000 and Con-
tract between the District and the Reconstruc-
tion Finance Corporation, authorized at an
election held in said District on the 20th day of
March, 1935.

D. K. BARNELL, W. H. ROBINSON, E. B.
MAZE, E. B. WOOD and J. A. WOLF, as and
constituting the Board of Directors of Merced
Irrigation District,

Plaintiffs,

vs.

ALL PERSONS, including all those in any way
interested or to be interested in the Refunding
Bonds of Merced Irrigation District of the

aggregate par value of \$8,600,000, and the Contract between the District and the Reconstruction Finance Corporation, authorized at an election held in said District on the 20th day of March, 1935, and all those having or claiming any right, title or interest in or claim upon the property within said district, or any part thereof,

Defendants.

The above entitled cause came on regularly for hearing in open court on this 24th day of December, 1935, before the court sitting without a jury, Messrs. Downey, Brand & Seymour, C. Ray Robinson, Esq., and Hugh K. Landram, Esq., appeared as attorneys for plaintiffs. Due proof was made by satisfactory evidence [495] submitted to the court that plaintiffs caused this action to be brought in the above entitled court within the proper time; that summons in due form of law was issued herein and was duly published for at least once a week for three successive weeks in the "Merced Sun-Star," a newspaper of general circulation printed and published in Merced in the County of Merced, State of California, and designated by this court for such publication; and that such publication was in all respects in compliance with law and the order of this court; that more than ten days have elapsed after the final publication of said summons; that jurisdiction of the subject of this action and of all persons interested has been duly obtained by this

court and is complete and that no person appeared in said action or at the trial or contested the validity of said bonds or any thereof.

And it further appearing that the time for such appearance and contest has expired, and the default of all defendants having been duly entered, it is now on motion of plaintiffs, Ordered, Adjudged and Decreed as follows:

I.

That Merced Irrigation District is, and ever since the 8th day of December, 1919, has been, an irrigation district duly and regularly organized and existing under the act of the Legislature of the State of California entitled, "An Act to provide for the organization and government of irrigation districts and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," approved March 31, 1897, and acts amendatory thereof and supplemental thereto. That said district is situate entirely within the County of Merced in said State of California. That said district is, and at all of said times has been, acting as and exercising the rights of an irrigation district under said act [496] and the acts amendatory thereof and supplemental thereto.

III.

(Paragraph III describes the old outstanding bonds in the sum of \$16,190,000, and continues as follows:)

That thereafter and heretofore Merced Irrigation District, by proceedings duly had and taken in accordance with law, authorized the issuance of \$16,190,000 principal amount of bonds to be designated "First Refunding Issue," of said district. That thereafter and heretofore, by proceedings duly had and taken in accordance with law, said district was granted authority to cancel and annul the authority conferred upon it for the issuance of said \$16,190,000 principal amount of said bonds of the First Refunding Issue, and that accordingly none of said bonds of the First Refunding Issue have been or will be authorized to be issued or outstanding."

IV.

That heretofore on or about the 16th day of December, 1933, said district duly filed with the Reconstruction Finance Corporation, an agency of the United States of America, its application for a loan for the purpose of reducing and refinancing outstanding indebtedness of said district under the provisions of the Emergency Farm Mortgage Act of 1933, as amended, and that on or about the 14th day of November, 1934, said Reconstruction Finance Corporation authorized a loan to or for the benefit of said district of not exceeding \$8,600,000, subject to all of the terms and conditions set forth in a resolution adopted by said Reconstruction Finance Corporation. That a copy of said Corporation Resolution is annexed to the complaint on file in this action and marked "Exhibit No. 1" thereof.

That on or about the 11th day of December, 1934, the Board of Directors of said district duly accepted said loan and agreed with said Reconstruction Finance Corporation to comply with, fulfil and carry out all of the provisions, terms and [497] requirements to be by said district carried out and fulfilled. That a copy of said resolution is annexed to the complaint on file in this action and marked "Exhibit No. 2" thereof.

That on or about the 6th day of July, 1935, said Reconstruction Finance Corporation by resolution amended its original Resolution adopted on November 14, 1934, in certain particulars, and that on or about the 23rd day of July, 1935, the Board of Directors of said district by resolution accepted such amendment by the Reconstruction Finance Corporation. That a copy of said amendatory resolution and of said acceptance are attached to the complaint on file in this action and marked, respectively, "Exhibit No. 3" and "Exhibit No. 4" thereto.

V.

That on or about the 11th day of February, 1935, while each and all of the above described bonds of said district in the aggregate principal amount of \$16,190,000 were outstanding as hereinabove set forth, the Board of Directors of said district, at a meeting of said Board duly called and held at its office, by resolution adopted a refunding plan for the purpose of reducing and refinancing outstand-

ing indebtedness of said district under the provisions of Sections 32a, 32b, 32c, 32d and 32e of the California Irrigation District Act, and also under the provisions of an Act of the Legislature of the State of California entitled, "An Act to authorize irrigation districts to cooperate and contract with the United States under the provisions of the Federal reclamation laws for a water supply, or the construction, operation or maintenance of works, including drainage works, or for the assumption by the district of indebtedness to the United States on account of district lands; and to provide the manner and method of payments to the United States under such contract, and for the apportionment of assessments, and the levy thereof, upon the lands of the district to secure revenue for such payments, and to provide for the judicial [498] revenue and determination of the validity of the proceedings in connection with such contract, and to provide for construction of works by the district; to provide for the borrowing or procuring of money from the United States or any agency thereof and the entering into contract, and/or the issuance of bonds, warrants or other evidence of indebtedness for the repayment thereof," (approved May 5, 1917, Stats. 1917, page 243, as amended) pursuant to which said district proposed to issue \$8,600,000 principal amount of refunding bonds. That said Board of Directors further prescribed in and by said resolution that a copy of said resolution should be filed with the California Districts Securities

Commission in order to secure its approval of the said refunding plan. That a copy of said resolution is attached to the complaint on file in this action and marked "Exhibit No. 5" thereof.

VI.

That said resolution was thereafter duly filed with said California Districts Securities Commission and said Commission did, on the 15th day of February, 1935, make its Order No. 54 approving said refunding plan. That a copy of said Order No. 54 is attached to the complaint on file in this action and marked "Exhibit No. 6" thereof.

VII.

That thereafter, to wit, on the 19th day of February, 1935, the Board of Directors of said district at a meeting of said Board duly called and held at its office, adopted a resolution calling a special election in said district on Wednesday, the 20th day of March, 1935, for the purpose of submitting to the qualified electors of said district the following proposition, to wit:

Proposition: Shall the Merced Irrigation District enter into and execute a contract with the Reconstruction Finance Corporation, an agency of the United States of America, providing for the issuance of refunding bonds and complying with the requirements of [499] said Corporation, including among other things provisions for the levy and collection within this District of assessments that will be sufficient in

amount to pay such bonds together with interest thereon when the same fall due and also to create a reserve fund, and also for the allocation by the District of funds and income derived from the sale of electric power under the provisions of the existing contract between the District and the San Joaquin Light & Power Company dated February 21, 1924, in an amount and manner satisfactory to the District and the Reconstruction Finance Corporation; and shall said District issue refunding bonds in the principal amount of \$8,600,000 for the purpose of reducing and refinancing outstanding indebtedness of said District, under and pursuant to and in accordance with the resolution adopted by the Reconstruction Finance Corporation dated November 14, 1934, and accepted by the Board of Directors of said District on December 11, 1934, and pursuant to the refunding plan adopted by the Board of Directors of said District on February 11th, 1935, and Order No. 54 of the California Districts Securities Commission dated February 15th, 1935, approving said plan and authorizing such refunding?

That a copy of said resolution is attached to the complaint on file in this action and marked "Exhibit No. 7" thereof.

VIII.

That the Secretary of said district, pursuant to said resolution, thereafter caused notice of said

special election to be published in the "Merced Sun-Star" on the following dates, to wit: February 23, 1935, March 2, 1935, and March 9, 1935, as more fully appears from the affidavit of Hugh McClung. That a copy of said affidavit of publication is attached to the complaint on file in this action and marked "Exhibit No. 8" thereto. That said "Merced Sun-Star" is, and was at all of the times herein and in said complaint mentioned, a newspaper of general circulation printed and published in the City of Merced, in the County of Merced, State of California.

That the Secretary of said district, pursuant to said resolution, caused to be posted in three public places in each of the thirteen election precincts into which said district was divided, and also in the office of the Board of Directors of said district, a notice of said special election; that said notices were so posted on February 26th and 27th, 1935. That the affidavits of H. P. Sargent, Secretary of said district, and L. D. Boysen, [500] relative to said posting, are attached to the complaint on file in this action and collectively marked "Exhibit No. 9" thereof.

IX.

That said special election was duly held and conducted and the votes thereat received and canvassed, and the result thereof determined and declared in all respects as required by law, and due notice thereof was given in all respects as required by law. That the polls at said election were opened at six

o'clock A. M. of the day of the election and were kept open until seven o'clock P. M. of said day, when the same were closed. That thereafter, on the first Monday after said election, to wit, on the 25th day of March, 1935, the Board of Directors of said district met at its office to canvass the returns of said election and did thereupon determine and declare that the total number of votes cast at said election was 3966; that 3925 votes were cast at said election in favor of said proposition and that 41 votes were cast thereat against said proposition; that more than two-thirds of the voters voting at said election voted in favor of said proposition and that said proposition was carried. That a copy of the canvass of said Board of Directors determining and declaring the result of said special election is attached to the complaint on file in this action and marked "Exhibit No. 10" thereof.

X.

That thereafter, to wit, at a meeting of said Board of Directors duly called and held at its office on the 10th day of September, 1935, said Board of Directors adopted a resolution for the issuance of said refunding bonds of said Merced Irrigation District in the aggregate principal amount of \$8,600,000. That a copy of said resolution if issuance is attached to the complaint on file in this action and marked "Exhibit No. 11" thereof.

XI.

That thereafter, to wit, at a meeting of said Board of [501] Directors duly called and held at its office on the 10th day of September, 1935, said Board of Directors adopted a resolution authorizing the execution of a contract with the Reconstruction Finance Corporation for the purchase of said refunding bonds, a copy of which contract was set forth at length in said resolution. That a copy of said resolution authorizing the execution of said contract incorporated therein and made a part thereof is attached to the complaint on file in this action and marked "Exhibit No. 12" thereof.

XII.

That thereafter, to wit, on the 10th day of September, 1935, the Board of Directors of said district, at a meeting duly called and held at its office, adopted a resolution ordering court proceedings to determine the validity of said contract with the Reconstruction Finance Corporation and said refunding issue of bonds of said district, wherein and whereby said Board of Directors authorized the commencement of this action. That a copy of said last mentioned resolution is attached to the complaint on file in this action and marked "Exhibit No. 13" thereof.

XIII.

That each and all of the proceedings for and in connection with the authorization of said contract with the Reconstruction Finance Corporation and

the issuance of said refunding bonds were and are valid and lawful, and that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the execution of said contract and the issuance of said refunding bonds as hereinbefore set forth did exist, happened and were performed in regular and due time, form and manner as required by law, and that said district is duly authorized and empowered to execute and perform said contract and to issue said refunding bonds authorized at said election on said 20th day of March, 1935, and that all of said refunding bonds so authorized [502] as hereinbefore set forth are, and will be when executed and delivered, the valid and legally binding obligations of said district, payable in accordance with their terms, both principal and interest, from revenue derived from an annual assessment upon the lands within the district in accordance with the provisions of Sections 33 and 39 of the California Irrigation District Act and the provisions of Section 11 of said Act of May 5, 1917, as amended, and that the full faith and credit of said district has been, and is pledged to the punctual payment of the principal and interest of said refunding bonds in accordance with said provisions of said California Irrigation District Act and in accordance with Section 11 of said Act of May 5, 1917, as amended. That to further assure the payment of the principal and interest of said refunding bonds, as the same mature, said district

by resolution of its Board of Directors and with the consent and approval of the California Districts Securities Commission heretofore duly given and made, has created and agreed to maintain a Reserve Fund into which will be deposited from time to time such sums as may be raised by assessments upon the lands in the district (unless funds for that purpose shall otherwise be provided by said district) up to, but not in excess of, \$461,000, to be used solely for the purpose of making up deficiencies in the Bond Interest Fund or Bond Principal Fund of the district due to delinquencies in the payment of assessments levied upon the lands in the district for the payment of interest or principal, respectively. That in accordance with the provisions of Section 32a, 32b, 32c, 32d and 32e of the California Irrigation District Act, said district by and with the consent and approval of the California Districts Securities Commission heretofore given and made, has allocated to the payment of principal and interest of said refunding bonds and to the maintenance of the Reserve Fund hereinabove mentioned, a portion of the proceeds of the existing contract between the District and the San Joaquin Light & Power [503] Company dated February 21, 1924, and of any and all additional contracts with said San Joaquin Light & Power Company, or its successor in interest, amendatory of said existing contract or supplemental thereto. That the proceedings of said district in respect to the creation and maintenance of said Reserve Fund and the alloca-

tion of said portion of the proceeds of said contract between the District and said San Joaquin Light & Power Company to the payment of the principal and interest of said refunding bonds and to the maintenance of said Reserve Fund are, and each of them is, valid and in accordance with law, and the obligations imposed upon said district pursuant to said proceedings with respect to the creation and maintenance of said Reserve Fund and the allocation of the proceeds of said contract to the payment of the principal and interest of said refunding bonds and to the maintenance of said Reserve Fund are valid and legally binding upon said District.

And It Is Further Ordered, Adjudged and Decreed that each and all of said refunding bonds of said Merced Irrigation District, aggregating \$8,600,000 principal amount, designated "Second Refunding Issue," authorized at an election held on the 20th day of March, 1935, are valid and that both principal and interest of said refunding bonds of said Second Refunding Issue are payable in accordance with the provisions of Sections 33 and 39 of the California Irrigation District Act and the provisions of Section 11 of said Act of May 5, 1917, as amended, and that the bonds of said Second Refunding Issue, and the interest coupons attached thereto, are and each of them is in all respects valid, and that the full faith and credit of said district are pledged for the payment of the same in accordance with the provisions of Section 33 and 39 of the California Irrigation District Act and the

provisions of Section 11 of said Act of May 5, 1917, as amended, and that said district has duly and regularly created said Reserve Fund and duly and regularly allocated certain of said power revenues, as herein- [504] before set forth, and is and has been duly authorized to create said Reserve Fund and to make said power revenue allocation, and that the same, and each of them, are valid and binding obligations of said district.

And It Is Further Ordered, Adjudged and Decreed that said contract with the Reconstruction Finance Corporation as set forth in the resolution of the Board of Directors of Merced Irrigation District (Exhibit No. 12 to the complaint on file in this action) is valid and that said Merced Irrigation District is, and has been, duly authorized to enter into and execute the same and to carry out and perform the terms and conditions thereof.

Duly given and made in open court this 24th day of December, 1935.

STANLEY MURRAY,

Judge of the Superior Court.

Recorded, Dec. 24, 1935, in book T, page 328, of Judgments.

By CECILIA JOHNSON,

Deputy Clerk.

The exhibits which were referred to in the foregoing judgment are found as follows or are summarized as follows:

Exhibit 1 is at page 155 of Respondents' Exhibit "OO" herein.

Exhibit 2 is at page 180 of Respondents' Exhibit "OO".

Exhibit 3 is at page 192 of Respondents' Exhibit "OO".

Exhibit 4 is at page 194 of Respondents' Exhibit "OO".

Exhibit 5 is at page 183 of Respondents' Exhibit "OO".

Exhibit 6 is Order #54 of Districts Securities Commission and is Respondents' Exhibit "HH" in the Appendix. [See page 949.]

Exhibit 7 is a Resolution of the Board of Directors of [505] Merced Irrigation District dated February 19, 1935, calling special election of the electors of the district for March 20, 1935, to vote upon the proposition stated in paragraph VII of the foregoing judgment.

Exhibit 8 was an affidavit of publication of notice of special election.

Exhibit 9 was an affidavit of posting said notice.

Exhibit 10 was a copy of the canvass of the special election.

Exhibit 11 was a Resolution of the Board of Directors of Merced Irrigation District for issuance of refunding bonds, as follows:

Whereas, Merced Irrigation District is an irrigation district duly organized and existing under and subject to the provisions of the California Irrigation District Act; and

Whereas, Merced Irrigation District has heretofore duly authorized and issued an issue of its

bonds, designated "First Issue," in the aggregate principal amount of \$12,000,000 divided into four divisions as follows:

First Division, of the aggregate principal amount of \$3,120,000, consisting of 3281 bonds of the denominations of \$500 and \$100, all dated January 1, 1922, bearing interest at the rate of 6% per annum, payable semiannually on the 1st days of January and July of each year, maturing serially on January 1st in each of the years 1933 to 1950, both inclusive, of which division bonds in the principal amount of \$3,060,000 are now outstanding;

Second Division, of the aggregate principal amount of \$1,800,000, consisting of 1800 bonds of the denomination of \$1000 each, all dated January 1, 1922, bearing interest at the rate of 5½% per annum, payable semiannually on the 1st days of January and July of each year, maturing serially on January 1st in each of the years 1951 to 1953, both inclusive, of which division bonds in the principal amount of \$1,800,000 are now outstanding;

Third Division, of the aggregate principal amount of \$1,320,000, consisting of 1320 bonds of the denomination of \$1000 each, all dated January 1, 1922, bearing interest at the rate of 5½% per annum, payable semiannually on the 1st days of January and July of each year, maturing serially on January 1st in each of the years 1954 and 1955, of which division bonds

in the principal amount of \$1,320,000 are now outstanding; and

Fourth Division, of the aggregate principal amount of \$5,760,000, consisting of 5760 bonds of the denomination of \$1000 each, all dated January 1, 1922, bearing interest at the rate of 6% per annum, payable semiannually on the 1st days of January and July in each year, maturing serially on January 1st in each of the years 1956 to 1962, both inclusive, of which division bonds in the principal amount of \$5,760,000 are now outstanding; [506]

Whereas, said District has heretofore duly authorized and issued an issue of its bonds designated "Second Issue", in the aggregate principal amount of \$3,250,000, consisting of 3250 bonds of the denomination of \$1000 each, numbered B1 to B3250, inclusive, all dated May 1, 1924, bearing interest at the rate of 6% per annum, payable semiannually on the 1st days of January and July of each year, maturing serially on January 1st in each of the years 1937 to 1946, both inclusive, and in the years 1963 and 1964, of which issue bonds in the principal amount of \$3,250,000, are now outstanding; and

Whereas, said District has heretofore duly authorized and issued an issue of its bonds designated "Third Issue", in the aggregate principal amount of \$1,000,000, consisting of 1000 bonds of the denomination of \$1000 each, numbered C1 to C1000, inclusive, all dated April 1, 1926, bearing interest at the rate of 5½% per annum, payable semiannu-

ally on the 1st days of January and July of each year, maturing serially on January 1st in each of the years 1965 and 1966, of which issue bonds in the principal amount of \$1,000,000 are now outstanding; and

Whereas, pursuant to proceedings duly had and taken by the Board of Directors of said District an election was held in said District on the 22nd day of November, 1933, at which election the issuance of \$16,190,000 principal amount of bonds, to be designated "First Refunding Issue" of said District, was duly authorized by the electors of said District, none of which bonds have been issued or are outstanding; and

Whereas, said district by proceedings duly had and taken has duly and regularly canceled and annulled the authority granted to said district pursuant to said election held on said 22nd day of November, 1933, for the issuance of said \$16,190,000 principal [507] amount of bonds of said First Refunding Issue, pursuant to which said proceedings none of said refunding bonds of said First Refunding Issue are or will be authorized to be issued or outstanding; and

Whereas, on the 12th day of December, 1933, said Merced Irrigation District (hereinafter designated as the "District") duly filed with the Reconstruction Finance Corporation (hereinafter designated as the "Corporation"), its application (Docket No. Ref. 58) for a loan for the purpose of refunding

and refinancing the outstanding indebtedness of said District under the provisions of the Emergency Farm Mortgage Act of 1933, as amended; and

Whereas, on the 14th day of November, 1934, the said Corporation authorized a loan to or for the benefit of said District of not exceeding \$8,600,000, subject to all of the terms and conditions set forth in the resolution adopted by said Corporation hereinafter referred to; and

Whereas, on the 11th day of December, 1934, the Board of Directors of said District, by resolution, duly accepted said loan and agreed with said Reconstruction Finance Corporation to comply with, fulfill and carry out all the provisions, terms, conditions and requirements set forth in said resolution to be by said District carried out and fulfilled; and

Whereas, the Board of Directors of said District desiring to refund the outstanding bonds of said District above described, heretofore, to wit, on February 11, 1935, adopted a resolution setting forth a refunding plan (hereinafter sometimes called the "Plan") and directed that an application be filed with the California Districts Securities Commission for an order approving said Plan and the issuance of refunding bonds of said District in accordance with the provisions of the California Irrigation District Act [508] and acts amendatory thereof and supplemental thereto, including the Act of May 5, 1917 (Stats. 1917, p. 243, as amended); and

Whereas, the written application of said District for the approval of said Plan was thereafter duly filed with the California Districts Securities Commission and said Commission did thereafter, to wit, on or about the 15th day of February, 1935, by its Order No. 54, duly approve said Plan and authorized this Board of Directors to call and hold an election for the purpose of authorizing the issuance of refunding bonds pursuant to said plan; and

Whereas, by resolution duly adopted on the 19th day of February, 1935, this Board of Directors did call a special election to be held in said District on the 20th day of March, 1935, at which election there should be submitted to the electors of said District possessing the qualifications prescribed by the California Irrigation District Act the question of whether or not said District should enter into and execute a contract with the Reconstruction Finance Corporation, an Agency of the United States of America, for the issuance of refunding bonds in the principal amount of \$8,600,000, for the purpose of reducing and refinancing outstanding indebtedness of said District in accordance with and as provided for by said Corporation Resolution, and the said refunding plan duly adopted by the District and approved by the California Districts Securities Commission by its Order No. 54, dated February 15, 1935, such contract to provide for the setting up of an adequate reserve fund for delinquencies of assessment payments and to contain other appropriate provisions for effecting such reduction and

refinancing of all or a part of the indebtedness of the District, and also the question of the issuance of such bonds; and [509]

Whereas, notice of said election containing all of the matters required by law was duly published and posted in the manner and for the time required by law and said special election was duly held in accordance with law and with said resolution and order of this Board on said 20th day of March, 1935, and the polls at said election were kept open during the time required and specified by law and the said order of this Board of Directors, and the ballots used at said election were in the form prescribed by law and by said order of said election was duly called, held and conducted, and the votes thereat received and canvassed, and the returns thereof ascertained, determined and declared all as required by and in accordance with the California Irrigation District Act and the acts amendatory thereof and supplemental thereto, including said act of May 5, 1917 (Stats. 1917, p. 243, as amended) and said resolution and order of said Board of Directors; and

Whereas, at said election the proposition for execution of said contract with the Reconstruction Finance Corporation and the issuance of said refunding bonds received more than two-thirds of all of the votes cast thereat, and thereafter, to wit, on the 25th day of March, 1935 (the first Monday after said election), this Board of Directors met at its usual place of meeting, to wit, at the office of said

District in Merced, California, to canvass the returns of said election and at said meeting this Board found that all returns had been duly made and proceeded to canvass said returns, and found and determined and does hereby find and determine that said election had been duly and regularly called and held upon due notice, and that more than two-thirds of all of the votes cast at said election, to wit, 3925 votes cast thereat, were in favor [510] of the execution of said contract with the Reconstruction Finance Corporation and of the issuance of said refunding bonds, all in accordance with said Plan, and 41 votes cast thereat were against the execution of said contract and the issuance of said refunding bonds, and said Board of Directors at said time did also declare the result of said election and did duly and regularly cause the same to be entered of record; and

Whereas, this Board has duly executed a contract with the Reconstruction Finance Corporation in strict accordance with the terms of the Resolution of the Reconstruction Finance Corporation adopted November 14, 1934, and has agreed to sell and deliver to said Reconstruction Finance Corporation said \$8,600,000 principal amount of its refunding bonds at the price of par and accrued interest thereon; and

Whereas, it further appears to this Board that the purpose for which said refunding bonds were authorized to be issued was and is a lawful and

proper purpose for which refunding bonds of said District may be lawfully issued under the provisions of said California Irrigation District Act and the acts amendatory thereof and supplemental thereto, including said act of May 5, 1917 (Stats. 1917, p. 243, as amended), and that said refunding bonds when delivered will be the valid and legally binding obligations of said District, payable in accordance with their terms and the California Irrigation District Act and the acts amendatory thereof and supplemental thereto, including said act of May 5, 1917, (Stats. 1917, p. 243, as amended), from revenue derived from an annual assessment upon all of the land within said District (unless funds for such purpose shall otherwise be provided by said District) [511] and that all of such lands shall be and remain liable to be assessed for such payments in an amount sufficient to raise the interest due or that will become due upon all of such refunding bonds and also sufficient to pay the principal of all of such refunding bonds as the same matures, and also to create a reserve fund, and that all acts, conditions and things required by law to exist, happen and to be performed precedent to and in the issuance of said refunding bonds and the execution of said contract with the Reconstruction Finance Corporation have existed, happened and been performed in due time, form and manner as required by law, and that this Board of Directors is lawfully empowered to enter into and execute said contract

with the Reconstruction Finance Corporation and to issue such refunding bonds pursuant to the provisions of law and the proceedings heretofore taken.

Now, Therefore, The Board of Directors of Merced Irrigation District do hereby resolve, determine and declare:

1. That each and all of the matters hereinabove recited are true and correct.

2. That refunding bonds of Merced Irrigation District to be known as the "Second Refunding Issue" of refunding bonds of said District, of the aggregate principal amount of \$8,600,000 be issued by said District. All of said bonds shall be dated July 1, 1935, and shall bear interest at the rate of four (4) per cent. per annum, payable semiannually on January 1st and July 1st of each year, at the office of Bank of America National Trust and Savings Association, San Francisco, California. Such interest (unless said bonds be registered) shall be payable only upon presentation and surrender [512] of the respective interest coupons attached thereto, each of which shall represent six months' interest on the bond to which it is attached. The first interest coupon shall represent interest accruing on said refunding bonds from and including July 1, 1935, to January 1, 1936. Each of said coupons shall be numbered consecutively in the order of their respective maturity. Both the principal of and the interest on said refunding bonds shall be payable in lawful money of the United States of America. Said refunding bonds shall be 8,608 in

number, numbered from 1 to 8608, inclusive, whereof sixteen (16) bonds (being bonds Nos. 239, 366, 498, 635, 1079, 2140, 2553, 2772, 3000, 3237, 4282, 4870, 5505, 5842, 6935 and 7739) shall be of the denomination of \$500.00, and the remaining 8592 bonds shall be of the denomination of \$1000.00. Said refunding bonds shall mature and become payable as follows, to-wit:

\$1000 Bonds Numbers	\$500.00 Bonds Numbers	Principal Payments	Maturity Dates
1- 117		\$117,000.00	July 1, 1941
118- 238	239	121,500.00	July 1, 1942
240- 365	366	126,500.00	July 1, 1943
367- 497	498	131,500.00	July 1, 1944
499- 634	635	136,500.00	July 1, 1945
636- 777		142,000.00	July 1, 1946
778- 925		148,000.00	July 1, 1947
926-1078	1079	153,500.00	July 1, 1948
1080-1239		160,000.00	July 1, 1949
1240-1405		166,000.00	July 1, 1950
1406-1578		173,000.00	July 1, 1951
1579-1758		180,000.00	July 1, 1952
1759-1945		187,000.00	July 1, 1953
1946-2139	2140	194,500.00	July 1, 1954
2141-2342		202,000.00	July 1, 1955
2343-2552	2553	210,500.00	July 1, 1956
2554-2771	2772	218,500.00	July 1, 1957
2773-2999	3000	227,500.00	July 1, 1958
3001-3236	3237	236,500.00	July 1, 1959
3238-3483		246,000.00	July 1, 1960
[513]			
3484-3739		256,000.00	July 1, 1961
3740-4005		266,000.00	July 1, 1962
4006-4281	4282	276,500.00	July 1, 1963
4283-4570		288,000.00	July 1, 1964
4571-4869	4870	299,500.00	July 1, 1965
4871-5181		311,000.00	July 1, 1966

\$1000 Bonds Numbers	\$500.00 Bonds Numbers	Principal Payments	Maturity Dates
5182-5504	5505	323,500.00	July 1, 1967
5506-5841	5842	336,500.00	July 1, 1968
5843-6192		350,000.00	July 1, 1969
6193-6556		364,000.00	July 1, 1970
6557-6934	6935	378,500.00	July 1, 1971
6936-7329		394,000.00	July 1, 1972
7330-7738	7739	409,500.00	July 1, 1973
7740-8165		426,000.00	July 1, 1974
8166-8608		443,000.00	July 1, 1975

3. (a) Said Second Refunding Issue of Bonds of Merced Irrigation District shall be in substantially the following form, the blanks being suitably filled in to indicate bond numbers, denominations, and maturity dates, viz:

(here inserted form of bond)

[514]

4. The President and the Secretary of the Board of Directors of Merced Irrigation District who may be in office at the date of said bonds, or at any time thereafter prior to the delivery of said bonds, and each of said officers, are hereby authorized and directed respectively as such officers to sign each of said bonds on behalf of said district, and the Secretary of said district is hereby authorized and directed to affix the seal of said district thereto, and said Secretary is further authorized and directed to sign each of the interest coupons either by his own hand or by lithographed or engraved facsimile of such signature, and such signing, countersigning and sealing shall be a sufficient and bind-

ing execution of said bonds and coupons by said district.

5. The Secretary of said district is directed to cause to be lithographed, printed or engraved a sufficient number of blank bonds and coupons of suitable quality and to cause the blank spaces thereof to be filled in to comply with the provisions hereof, and to procure their execution by the proper officers of this district, and to deliver them when so executed to the treasurer of said district who shall safely keep the same subject to the further order of this Board of Directors.

6. The full faith and credit of Merced Irrigation District are hereby pledged to each successive holder of any of said refunding bonds of said Second Refunding Issue, for the payment of the principal of each of said refunding bonds and the interest thereon as it falls due. Each successive [515] owner and holder of said refunding bonds, or any of them, shall be entitled to rely upon the representations herein set forth and it is hereby certified, recited and declared that each and all of the matters herein recited and set forth are true and are correct and are for the direct benefit of each and all of the holders and owners of the present outstanding bonds of said district to be refunded hereby. All of said refunding bonds of said Second Refunding Issue shall be issued under and pursuant to the provisions of Sections 32-a, 32-b, 32-c, 32-d and 32-e, inclusive, of the California Irrigation District Act, and under and pursuant to the provisions of an act

of the Legislature of the State of California approved May 5, 1917 (Stats. 1917, p. 243, as amended), and none of said bonds shall be subject to the provisions of Section 11 of the California Districts Securities Commission Act. Both the principal of said refunding bonds of said Second Refunding Issue herein authorized to be issued, and the interest accruing thereon, shall be paid from revenue derived from an annual assessment upon the lands within said Merced Irrigation District (unless funds for such purpose shall otherwise be provided by said district), and all of the land within said district shall be and remain liable to be assessed for such payments in an amount sufficient to raise the interest due or that will become due on all of the refunding bonds of said Second Refunding Issue then outstanding as the same becomes due and payable in accordance with their terms, and also sufficient to pay the principal of all of the refunding bonds of said Second Refunding Issue as the same matures, and also sufficient to create a Reserve Fund as herein provided. The Board of [516] Directors of Merced Irrigation District hereby makes provision for the levy and collection of annual assessments upon all of the lands within said district in accordance with the provisions of Section 39 of the California Irrigation District Act and the provisions of Section 11 of said act of May 5, 1917, as amended by Stats. 1933, p. 2395, now in force, in amounts clearly sufficient to pay the principal of each of the refunding bonds and the cou-

pons attached thereto of said Second Refunding Issue as the same respectively become due, and to create a Reserve Fund, which provision shall inure to the benefit of each successive holder of any of said refunding bonds of said Second Refunding Issue and shall be irrevocable so long as any of said Refunding Bonds and the respective interest coupons shall be outstanding and unpaid.

7. A Reserve Fund is hereby created into which shall be deposited from time to time such sums as may be raised by assessments upon the lands in the district (unless funds for such purpose shall otherwise be provided by said district), up to but not in excess of \$461,000.00. The moneys in said Reserve Fund shall be used:

(a) For the purpose of paying interest on any of the refunding bonds whenever by reason of delinquencies in the payment of assessments levied upon the lands in the District for the payment of such interest, the moneys in the Bond Interest Fund of the District are insufficient to make such payments; and

(b) For the purpose of paying the whole, or any part, of the principal of any of said refunding bonds as the same mature, whenever by reason of delinquencies in the payment of assessments levied for that purpose the moneys in the Bond Principal Fund of the District are insufficient to make such payments. [517]

Under no circumstances shall any of the moneys in the Reserve Fund be used for ordinary opera-

tion and maintenance of the district, nor shall any of the moneys in said Reserve Fund be transferred to any other fund or used for any purpose other than the purposes hereinabove specified in the preceding subparagraphs (a) and (b) of this Section 7.

Whenever any moneys are withdrawn from the Reserve Fund, the district shall cause to be levied and collected, on all of the lands in the district, an assessment in such amount as will be sufficient to repay to the Reserve Fund the moneys so withdrawn therefrom, unless funds are otherwise provided therefor by said district. For the purpose of initially creating and building up said Reserve Fund, the following amounts shall be levied or otherwise provided by said district in the following years:

1935-1936	\$92,200.00
1936-1937	92,200.00
1937-1938	92,200.00
1938-1939	92,200.00
1939-1940	92,200.00

provided, however, that if in any fiscal year the District shall deposit in said Reserve Fund any amount in excess of \$92,200, it shall be entitled to take credit in any following years for the amount of the excess so deposited and the amount of the levy herein required to be made for such subsequent year or years shall be decreased by an amount equal to the anticipated or excess payment previously made in any such prior fiscal year or years;

and provided further, that should the amount deposited in such reserve fund in any fiscal year above designated be less than \$92,200, then additional levy shall be made the following year in sufficient amount to realize such deficit over and above the annual contribu- [518] tion of \$92,200. The district shall not be required, however, to maintain in said Reserve Fund any moneys in excess of the principal amount of the refunding bonds outstanding plus one year's interest thereon, and no further moneys need be deposited in said Reserve Fund after all of the refunding bonds authorized to be issued hereunder have been fully paid and discharged.

8. In accordance with the provisions of Sections 32-a, 32-b, 32-c, 32-d and 32-e of the California Irrigation District Act and Section 11 of said Act of May 5, 1917, as amended by Statutes of 1933, page 2395, now in force, there is hereby allocated to the payment of the principal and interest of said refunding bonds and to the maintenance of said Reserve Fund provided for in Paragraph 7 of this resolution, a portion (as hereinafter defined) of the proceeds of the existing contract between the District and the San Joaquin Light & Power Company dated February 21, 1924 (hereinafter called the "power contract"), and also any and all renewals and additional contracts with said San Joaquin Light & Power Company or its successor in interest, amendatory of said existing contract or supplemental thereto, and all of such portion of the pro-

ceeds of such existing power contract or supplemental thereto shall be applied solely to the payment of the obligations specified in this resolution. Such allocation shall be, and is hereby, made for the exclusive benefit of the refunding bonds authorized to be issued pursuant to this resolution and such allocation shall be irrevocable until all of said refunding bonds and their appurtenant coupons herein authorized to be issued shall have been paid or retired. The portion of the proceeds of the existing power contract (said term as used in this resolution being deemed to include any and all renewals and additional contracts with said San Joaquin Light & Power Company [519] or any successor, amendatory of said existing contract or supplemental thereto) which is hereby allocated for the purposes in this resolution stated, is hereby defined to be that portion of the proceeds received from said power contract by the District in each calendar year commencing January 1, 1936 except the first \$100,000 thereof and except any amount in excess of \$575,000 in each such calendar year, to be ascertained and determined in each such calendar year as follows, to-wit

(a) Until January 1, 1936 none of the proceeds of said power contract paid prior to January 1, 1936 shall be deemed to have been allocated for the purposes in this resolution stated and all of such proceeds shall be retained by the District and used for any district purpose;

(b) All of the proceeds of said power contract received by the District after January 1, 1936, up to but not in excess of the first \$100,000 in each calendar year commencing January 1, 1936, shall be held and applied by the District for any district purpose;

(c) All of the proceeds of said power contract received by the District in any such calendar year subsequent to January 1, 1936, in excess of the first \$100,000 but not in excess of \$475,000 in any such calendar year, shall be, and are hereby, allocated for the purposes in this resolution stated and none of such moneys shall be used or applied by the District except as in this resolution provided;

(d) All of the proceeds of said power contract in each calendar year subsequent to January 1, 1936 in excess of (i) the first \$100,000 thereof and (ii) the next \$475,000 thereof, shall be held and applied by the District for any district purpose. [520]

Said portion of the proceeds of said power contract hereby allocated to the payment of the obligations specified in this resolution shall be used and applied by said District as follows:

(aa) To the replenishment of the reserve fund provided for in Paragraph 7 of this resolution, for any withdrawals made therefrom by the District, unless said reserve fund shall be otherwise replenished from assessments levied and collected for that purpose;

(bb) To the extent that said moneys are not deposited in said Reserve Fund for the re-

plenishment thereof, the same shall be deposited in the Bond Interest Fund or Bond Principal Fund for the payment of principal and interest of said refunding bonds herein authorized to be issued, unless all principal and interest requirements for the then current year shall have been otherwise provided for by assessments levied upon the lands in the District;

(cc) To the extent that said moneys are not required for either of the purposes stated in subparagraphs (aa) and (bb) hereof, in any calendar year, the same shall be applied by the District to the purchase of said refunding bonds herein authorized to be issued, if any, then held by the Reconstruction Finance Corporation at the price of not exceeding the face value thereof and accrued interest to date of purchase; provided that if none of said refunding [521] bonds are then held by the Reconstruction Finance Corporation, said moneys shall be applied by the District to the purchase of any of said refunding bonds in the open market at the best price obtainable, but in no event exceeding the face value thereof and accrued interest to date of purchase; provided, however, that if the District shall duly and punctually pay in any calendar year (hereby defined as the "then current calendar year") the principal and interest requirements of the refunding bonds herein authorized to be issued, for such year

and following such payment there shall remain in the Reserve Fund an amount equal to the aggregate principal and interest requirements of the refunding bonds for the next ensuing calendar year, then all of the proceeds of said power revenues for such then current calendar year herein allocated to the payment of the principal and interest of said refunding bonds may be deposited by the District in the Bond Interest Fund or Bond Principal Fund for the payment of interest or principal of said refunding bonds to become due in said next ensuing calendar year and the amount of such deposits may be deducted from any amounts required to be raised by assessments upon the lands in the District for the payment of principal and interest of said refunding bonds in said next ensuing calendar year. Any proceeds of the power revenues so deposited by the District in the Bond Principal Fund or Bond Interest Fund shall be deemed to have been irrevocably allocated to the payment of principal or interest of said refunding bonds and shall not be withdrawn from said funds or used for any purpose other than the payment of principal and interest of said refunding bonds. [522]

Nothing in this resolution contained shall be construed or deemed to provide for the payment of said refunding bonds, either as to principal or interest or any portion thereof, solely from that portion of the proceeds of said power contract which

is hereby allocated to said refunding bonds, and such allocation shall be deemed to have been, and hereby is, made in addition to and supplemental to the obligation of the District to provide for the payment of said refunding bonds and the interest thereon and for the creation of a Reserve Fund from assessments upon the lands in said District as in this resolution provided, and for the purpose of providing further security for said refunding bonds.

9. The Board of Directors hereby declares that it deems it desirable that all of said refunding bonds of said Second Refunding Issue shall be made available for the purposes provided for in Section 9 of the California Districts Securities Commission Act, and the California Districts Securities Commission is hereby requested to make or cause to be made an investigation into the affairs of this District and to report thereon in writing and to file the same with the State Controller of the State of California, to the end that all of said bonds of said Second Refunding Issue may be certified by said State Controller as legal investments for trust funds and for the funds of all insurance companies, banks, both commercial and savings, trust companies, the State school funds and any funds which may be deposited as security for the performance of any act, whenever the bonds of any county, city, city and county or school district may be so deposited, and likewise be used as security for the deposit of public money in banks in the State of California. [523]

10. A copy of this resolution, duly certified by the Secretary of this District, shall be filed with the California Districts Securities Commission with a request that said Commission take such action to investigate into the affairs of the district and (a) to approve the terms and conditions of this resolution and of said refunding bonds, in so far as such approval may be required by law, and (b) to cause all of the bonds of said Second Refunding Issue to be certified by the State Controller of the State of California as aforesaid.

11. This resolution shall take effect immediately.

Adopted and Passed this 10th day of September 1935.

D. K. BARNELL,

President of the Board of Directors of Merced Irrigation District.

[Seal]

H. P. SARGENT,

Secretary of the Board of Directors of Merced Irrigation District.

Exhibit 12 was a resolution dated September 10, 1935, by the Board of Directors authorizing execution of bond purchase contract set forth therein, which contract is found at page 202 of Respondents' Exhibit "OO".

Exhibit 13 was a resolution of the Board of Directors dated September 10, 1935, ordering court proceedings to determine the validity of the said

contract with Reconstruction Finance Corporation and refunding bonds. [524]

PETITIONER'S EXHIBIT NO. 15

was a resolution of Merced Irrigation District board adopting plan of composition, dated November 18, 1938, reading as follows:

RESOLUTION OF THE BOARD OF DIRECTORS OF MERCED IRRIGATION DISTRICT AUTHORIZING AND DIRECTING ITS REPRESENTATIVES TO INSTITUTE AND PROSECUTE TO A FINAL DETERMINATION AN ACTION OR PROCEEDING UNDER THE NATIONAL BANKRUPTCY ACT FOR THE PURPOSE OF READJUSTING THE DISTRICT'S OUTSTANDING BOND INDEBTEDNESS AND SETTING FORTH THE PLAN OF COMPOSITION OF SAID BOND INDEBTEDNESS.

Whereas, the territory within the Merced Irrigation District, all of which is located in Merced County, California, (hereinafter called "district"), consists of lands used principally for agricultural purposes and the district has completed and operates certain improvements and projects devoted chiefly to the improvement of the lands in said district for agricultural purposes, to-wit: The supplying of water for the irrigation of said lands and

providing for the drainage of said lands, where necessary, the cost of which was largely paid for out of the proceeds received from the sale of bonds issued and sold by the district for such purpose; and

Whereas, due to the general depression and adverse agricultural conditions existing throughout the United States for the last several years, and the consequent low market value of farm products, the production of farm products in this district has been without profit, the value thereof often being less than the cost of production, with the result that the owners have been and will be unable to pay the district taxes levied upon the lands therein for the purpose of paying the district's bond indebtedness as and when the installments of principal and interest thereof have matured or will mature; and

[525]

Whereas, by reason of such adverse agricultural conditions and accumulated delinquent taxes, the value of the lands in the district has greatly decreased; and

Whereas, the district, without success has made due and diligent effort to collect the taxes so levied by it upon the lands therein whereupon it became apparent that unless the outstanding bond indebtedness of the district was reduced and refinanced the burden of district taxes upon the lands therein would be greater than the value thereof; and

Whereas, there are now issued and outstanding bonds of Merced Irrigation District totaling the

sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) in principal amount, described as follows, to-wit:

(a) An issue of bonds designated as First Issue in the aggregate principal amount of Eleven Million Nine Hundred Forty Thousand Dollars (\$11,940,000.00) payable as follows:

1. Division First, all dated January 1, 1922, being in the aggregate principal amount of Three Million Sixty Thousand Dollars (\$3,060,000.00) bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1934 to 1950 (both inclusive).

2. Division Second, all dated January 1, 1922, being in the aggregate principal amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1951 to 1953 (both inclusive).

3. Division Third, all dated January 1, 1922, [526] being in the aggregate principal amount of One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00), bearing interest at the rate of Five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually on the first day of January

and the first day of July of each year, due serially from 1954 to 1955 (both inclusive).

4. Division Fourth, all dated January 1, 1922, being in the aggregate principal amount of Five Million Seven Hundred Sixty Thousand Dollars (\$5,760,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and the first day of July of each year, due serially from 1956 to 1962 (both inclusive).

(b) Issue of bonds designated as Second Issue, all dated May 1, 1924, in the aggregate principal amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), bearing interest at the rate of six per cent (6%) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1937 to 1964 (both inclusive).

(c) An issue of bonds designated as Third Issue, all dated April 1, 1926, in the aggregate principal amount of One Million Dollars (\$1,000,000.00), bearing interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum, payable semi-annually, on the first day of January and the first day of July of each year, due serially from 1965 to 1966 (both inclusive).

That all of said bonds have been duly issued under the provisions of said "California Irrigation

District Act" which said Act, together with the Act of the Legislature of [527] the State of California, approved June 19, 1931, page 2263, as amended, provide for the method of levying assessments by petitioner upon the lands located therein for the purpose of paying the principal amounts of, and interest on said bonds and for other purposes; and

Whereas, said bond indebtedness and the interest thereon due as of July 1, 1933, and subsequently, is unpaid and in default; and

Whereas, said district is unable to pay said bond indebtedness or its debts as they mature unless said bond indebtedness is readjusted as hereinafter provided; and

Whereas, said district does not own, hold or control any of the bonds or interest coupons appurtenant thereto constituting any of said bond indebtedness; and

Whereas, heretofore, the Reconstruction Finance Corporation, Washington, D. C., an agency of the United States of America, allocated certain funds for the purpose of assisting Merced Irrigation District to refinance its bond indebtedness under the plan of composition hereafter described and said district has heretofore, after proceedings to that end duly had and taken, authorized the issuance and delivery of refunding bonds hereinafter referred to and necessary to carry out said plan of readjustment; and

Whereas, the terms and conditions governing the relations between the Reconstruction Finance Cor-

poration and the Merced Irrigation District; the purchase of presently outstanding old bonds of Merced Irrigation District by the Reconstruction Finance Corporation; the exchange of old bonds purchased by the Reconstruction Finance Corporation for refunding bonds of the Merced Irrigation District; the terms and provisions of said refunding bonds and their issuance and payment by Merced Irrigation District, are set forth in the following resolutions and contracts, to-wit: [528]

1. Resolution of Reconstruction Finance Corporation, dated November 14, 1934, awarding loan to Merced Irrigation District and setting forth the terms and conditions thereof, and certain resolutions of Reconstruction Finance Corporation amendatory thereof and supplemental thereto, all of which resolutions were duly accepted by Merced Irrigation District;

2. Contract duly entered into by and between Reconstruction Finance Corporation and Merced Irrigation District, dated August 14, 1935;

3. Contract duly entered into between Merced Irrigation District and Reconstruction Finance Corporation, dated September 16, 1935; and

Whereas, the plan of composition hereinafter set forth has been determined by the district to be fair and equitable to both the holders of its outstanding bonds and to the owners of the lands within the dis-

trict and to be based upon what said district and the lands thereof shall be able to pay; and

Whereas, it is impossible for the district to consummate said plan unless it institutes and prosecutes to final determination an action or proceeding in the District Court of the United States, in and for the Southern District of California, Northern Division, (hereinafter called "court") pursuant to the Provisions of Chapter X of the National Bankruptcy Act approved July 1, 1898, as amended by Public No. 302, 75th Congress, approved August 16, 1937, whereby all of the district's outstanding bond indebtedness will be readjusted and refinanced in accordance with the plan of composition therefor as hereinafter set forth;

Now, Therefore, Be It

Resolved, that the following plan of composition of the bond indebtedness of said district be adopted, approved and [529] confirmed as follows, to-wit:

That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, miss-

ing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof, on the basis aforesaid, such bonds of petitioner held or purchased by said Recon-

struction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90), bearing interest at the rate of four per cent (4%) per annum.

The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto. In the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the President and Secretary of the district; and [530]

Be It Further Resolved that Messrs. C. Ray Robinson, Hugh K. Landram, Stephen W. Downey and Downey, Brand and Seymour, as attorneys for this District be, and they are hereby authorized and directed to file in the District Court of the United States for the Southern District of California a petition as provided in the National Bankruptcy

Act for the confirmation of said plan for the composition of the bond indebtedness of this District and that the President and Secretary of this Board, or either of them be, and they are hereby authorized and directed to sign and verify said petition in the name of and on behalf of said District and to execute in the name of said District such instruments as may be necessary or proper to obtain the confirmation of said plan and that said attorneys and officers be, and they are hereby authorized to take such other and further action and proceedings on behalf of this District as may be necessary to obtain the confirmation of said plan. [531]

PETITIONER'S EXHIBIT NO. 16

was acceptance of plan of composition of debts of Merced Irrigation District, as follows:

Whereas, this Corporation has purchased and now holds bonds aggregating in principal amount \$14,686,000 of Merced Irrigation District, Merced California; and

Whereas, the total of said bonds held by this Corporation as purchaser is in an amount exceeding 90% of the bonded indebtedness of said District; and

Whereas, said District desires to file a Petition in the United States District Court, under the provisions of Section 81, 82 and 83 of an Act of Congress of the United States entitled, "An Act to Establish

a Uniform System of Bankruptcy throughout the United States'', approved July 1, 1898, as amended, in order to effect a plan of composition of its outstanding indebtedness; and

Whereas, the Board of Directors of said District adopted a plan of composition of its outstanding indebtedness on the basis and including the terms and conditions as follows:

That outstanding bonds of said district in the total principal sum of Sixteen Million, One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be retired by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. If any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 44.78 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face value of such missing coupon; provided, however, that where deductions are made on account of missing coupons and thereafter such missing coupons are presented, there shall be paid to the holder thereof an [532]

amount equal to the sums which were originally deducted from the sum paid on account of such bonds to which such coupons appertained. That such payment be made out of a loan of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore authorized and allocated for that purpose by the Reconstruction Finance Corporation, an agency of the United States of America to or for the benefit of the Merced Irrigation District. That to evidence said loan Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation and accept in exchange for all or any part thereof on the basis aforesaid, such bonds of petitioner held or purchased by said Reconstruction Finance Corporation, to the end that the district will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) bearing interest at the rate of four per cent (4%) per annum.

The district, therefore, by such plan of composition proposes and offers the holders of its outstanding bonds cash equal to 51.501 cents

for each dollar of principal amount of said bonds upon surrender of such bonds and all interest coupons and right to interest appurtenant thereto which matured or became due July 1, 1933, and subsequently thereto. In the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the President and Secretary of the district; and

Whereas, such plan of composition appears to be fair, just and reasonable, and adopted in good faith on the part of such District, and has been approved by the Division Chief or Acting Chief of the Drainage, Levee and Irrigation Division and Counsel for this Corporation; and

Whereas, its adoption by Reconstruction Finance Corporation appears advisable;

Now, Therefore, by reason of the foregoing facts, and on the recommendation of the Division Chief or Acting Chief, such proposed plan of composition submitted by the Board of Directors of Merced Irrigation District, Merced, California, be and hereby is approved and accepted by Reconstruction Finance Corporation. [533]

And Reconstruction Finance Corporation consents that such District may file its petition for composition of its indebtedness in the United States District Court, as provided by the Act of

Congress entitled, "An Act to Establish a Uniform System of Bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereto. [534]

PETITIONER'S EXHIBIT NO. 17

COMPLAINT

This exhibit was a copy of complaint, entitled Reconstruction Finance Corporation, Plaintiff, vs. Merced Irrigation District, Defendant, in the Superior Court of the State of California, in and for the County of Merced, being Action Number 11608 therein. The complaint was dated June 10, 1937, and was unverified and was signed by Brobeck, Phleger and Harrison as attorneys for plaintiff.

The complaint stated that the Merced Irrigation District had issued certain interest bearing bonds in the amount of \$16,190,000, being the first, second, and third bond issues, and that the plaintiff is the owner and holder of certain of said bonds described in an exhibit attached to the complaint and that the plaintiff is also the owner and holder of all coupons maturing July 1, 1933, and thereafter, attached to and evidencing interest payable upon said bonds; that before the action was filed, and on or after the dates when the same became due, all matured bonds and matured interest coupons belonging to both the unmatured and matured bonds of plaintiff were presented for payment to the treasurer of

the district, and that payment was refused, and that no part of the face amount of said bonds or said coupons have been paid and no part of the interest due on the face amount of said bonds or said coupons or any of them had been paid, and that no notice had been given that funds are available for the payment thereof; that all of the bonds were duly registered as to ownership in the name of Reconstruction Finance Corporation, pursuant to the statute in such cases made and provided, and thereupon all interest coupons were detached from said bonds, and that interest had matured and is accruing on the bonds so registered as to ownership as provided by law; that a controversy exists between the parties as to the respective right and duties of the plaintiff and defend- [535] ant in connection with the payment of matured bonds and coupons and interest.

The prayer of the complaint demanded judgment for \$234,000, the face amount of matured bonds; \$2,492,072.50, the face amount of matured coupons; \$926,862.50, the principal amount of matured interest on bonds registered for ownership in the name of the Reconstruction Finance Corporation; interest at 7% from date of presentation of the bonds and coupons, on the face amount of the bonds and coupons; that the court fix and declare the respective rights and duties of plaintiff and defendant; and for costs of suit and such other relief as might be proper.

Attached to said complaint was a schedule, as stated in the complaint, setting forth the matters there referred to. [536]

PETITIONER'S EXHIBIT NO. 18

RESOLUTION

This exhibit was a resolution of the Board of Directors of Merced Irrigation District, dated June 15, 1937, reciting that whereas the Reconstruction Finance Corporation is the owner of certain bonds of the Merced Irrigation District which were described in an exhibit attached to the resolution, and which exhibit set forth the principal amount of bonds in the total sum of \$14,640,000 being bonds of the first, second, and third issues of the district, and further reciting that the Reconstruction Finance Corporation is also the owner of all interest coupons maturing July 1, 1933, and thereafter, appurtenant to said bonds, and interest that became due subsequent to June 30, 1933, on bonds that have been registered as to ownership in the name of the Reconstruction Finance Corporation, and further recited whereas none of said bondholders have been paid and that it is desired to acknowledge said bonds and coupons and interest and to waive any defense thereto, based upon the statute of limitations and the resolution then declared:

“Now, Therefore, Be It Resolved that Merced Irrigation District acknowledge the exist-

ence of the indebtedness of said District to Reconstruction Finance Corporation evidenced by said bonds, the numbers, issue, division, dates, dates of maturity and principal amount of said bonds being set forth on the list hereto attached marked "Exhibit A" and hereby made a part of this resolution. Said irrigation district further acknowledges the existence of the indebtedness on all coupons maturing July 1, 1933, and thereafter, appurtenant to or evidencing interest payable upon said bonds now held by Reconstruction Finance Corporation, and on all interest that has become due, subsequent to June 30, 1933, on bonds that have been registered as to ownership in the name of the Reconstruction Finance Corporation (all coupons maturing subsequent to date of registration having been detached from said bonds in accordance with law).

Merced Irrigation District further waives all defenses as to the statute of limitations with respect to said bonds, coupons and interest and with respect to any other of its bonds or coupons held by Reconstruction Finance Corporation." [537]

PETITIONER'S EXHIBIT NO. 19

was a letter from the Reconstruction Finance Corporation, dated Aug. 24, 1938, addressed to H. P. Sargent, Secretary, Merced Irrigation District,

signed by Frank J. Keenan, Chief, Drainage Levee & Irrigation System, reading as follows:

“This will acknowledge receipt of your letter of August 17th, advising that \$8,000 of additional old bonds are being presented for refinancing.

“We have already forwarded instructions to the Federal Reserve Bank of San Francisco for the purchase of additional old securities, and you no doubt have a copy of our instructions by this time.” [538]

PETITIONER'S EXHIBIT NO. 20

was a letter of Mr. Keenan of the Reconstruction Finance Corporation to Merced Irrigation District, dated July 1, 1938, reading as follows:

“This is to thank you for your letter of June 24th, enclosing Supplement No. 18 to Exhibit “A”, listing bond No. 11613 in the principal amount of \$1,000. I note that this bond has been forwarded to the Federal Reserve Bank of San Francisco.

“The Federal Reserve Bank has been instructed to purchase bonds of this district presented for payment prior to July 30, 1938. You will probably be advised within the next few days that this bond has been taken up.” [539]

PETITIONER'S EXHIBIT NO. 21

This was a group of letters from the Merced Irrigation District by its secretary to Frank J. Keenan as financial advisor of the drainage, levy and irrigation division of the Reconstruction Finance Corporation, and of letters from the last named to Mr. H. P. Sargent as secretary of the Merced Irrigation District between the dates from November 5, 1935, to June 26, 1937.

Letter of November 5, 1935, from Mr. Sargent to Mr. Keenan, as follows:

“Enclosed herein you will find Exhibit “A” Supplement #5 containing a list of \$76,000 principal sum of Merced bonds. This Exhibit “A” covers all bonds received since October 4, 1935, the date of distribution by the Federal Reserve Bank purchasing all bonds on deposit at that date.

The Federal Reserve Bank of San Francisco, in accordance with your instructions, have made disbursement on the \$76,000 bonds contained in this Exhibit, and are continuing to receive bonds in accordance with your instructions.”

Letter of November 12, 1935, from Keenan to Sargent, as follows:

“This will acknowledge receipt of your favor of November 5, 1935, enclosing Exhibit “A” Supplement #5 containing a list of bonds of the Merced Irrigation District in the sum of

\$76,000 which were deposited subsequent to October 4, 1935.”

Letter of November 26, 1935, from Sargent to Keenan as follows:

“Attached hereto you will find Exhibit A, Supplement #6, containing a list of \$47,000.00 par sum of Merced Irrigation District bonds. This Exhibit A covers all bonds received by the Federal Reserve Bank since November 5, 1935, and up to November 21, 1935.

“The Federal Reserve Bank of San Francisco, has made distribution on the \$47,000.00 of bonds contained in this exhibit.”

Letter of December 3, 1935, from Keenan to Sargent as follows:

“This will acknowledge receipt of your letter dated November 26 transmitting Supplement No. 6 to Exhibit A, containing list of \$47,000 par value Merced Irrigation District bonds which have been forwarded to the Federal Reserve Bank for purchase.”

Letter of December 7, 1935, from Sargent to Keenan as follows:

“Attached hereto you will find Exhibit A, Supplement #7, containing a list of \$71,000.00 principal sum of Merced [540] Irrigation District bonds, which were purchased for your account through the Federal Reserve Bank, of San Francisco, on December 4th, 1935.”

Letter of December 16, 1935, from Keenan to Sargent as follows:

“This will acknowledge receipt of your letter dated December 7th, transmitting Supplement “7” to Exhibit “A” containing a list of the \$71,000.00 principal amount of Merced Irrigation District bonds which were purchased by the Federal Reserve Bank of San Francisco on December 4th.”

Letter of December 17, 1935, from Sargent to Keenan as follows:

“On Exhibit A reference is made to bonds numbered #3771, 4268 to 4271 inclusive, 5022 to 5024 inclusive, 5479, and 5881 to 5882 of the first issue, which appear on said Exhibit A with deduction made for coupons missing on said bonds dated July 1, 1933.

“These bonds were sold to the Reconstruction Finance Corporation under the cash offer plan by Mrs. Mary Eva Butin, of Madera, California. These coupons had been clipped from the bonds prior to their presentation and through inadvertence were not attached to the bonds before their sale. The Security First National Bank of Los Angeles handled the transaction and deposited her bonds for sale under the plan without these coupons, and when distribution was made by the Federal Reserve Bank in accordance with terms of the plan, a deduction of \$135.46 was made, being at the

rate of 44.78% of the face amount of the coupons.

“Mrs. Butin has these coupons in her possession and has had at all times, and it was through inadvertence that they were not attached to the bonds when sold. She is anxious to turn these coupons in and receive the amount that was deducted; to-wit, \$135.46, but under your instructions to the Federal Reserve Bank it would appear that this could not be done after September 30, 1935.

“The purpose of this letter is to ask if the Reconstruction Finance Corporation will modify its instructions to the Federal Reserve Bank pertaining to the deduction made for these missing coupons, and whether the Reconstruction Finance Corporation will now at this time accept these coupons and instruct said bank to pay Mrs. Butin the sum of \$135.46.”

Letter of December 28, 1935, from Keenan to Sargent as follows:

“Receipt is acknowledged of your letter dated December 17, 1935, regarding the purchase by this Corporation of coupons owned by Mrs. Mary Eva Butin. The time within which disbursements may be made in connection with our loan to the Merced Irrigation District has been extended to January 30, 1936, and the Federal Reserve Bank at San Francisco is being instructed accordingly, and the coupons

owned by Mrs. Butin may be purchased by the Federal Reserve Bank, at the same rate for which deductions were made, if presented on or before January 30, 1936."

Letter of December 23, 1935, from Sargent to Keenan as follows:

"Attached hereto you will find Supplement #8 Exhibit A, showing additional bonds deposited and on which distribution has [541] been made by the Federal Reserve Bank, up to and including December 19, 1935, in the principal amount of \$132,000.00."

Letter of February 11, 1936, from Keenan to Sargent as follows:

"This will acknowledge receipt of your letter dated January 31st, transmitting Supplement No. 10, Exhibit "A", containing description of bonds purchased by the Reconstruction Finance Corporation through the Federal Reserve Bank of San Francisco in the principal amount of \$10,000 plus eleven interest coupons."

Letter of December 30, 1935, from Keenan to Sargent as follows:

"This will acknowledge receipt of your letter dated December 23rd, transmitting Supplement No. 8 to Exhibit A, covering \$132,000.00 principal amount of bonds."

Letter of January 4, 1936, from Sargent to Keenan, as follows:

“Attached hereto find Exhibit “A”, Supplement No. 9, on which are listed Merced Irrigation District Bonds on which the Federal Reserve Bank of San Francisco made distribution on December 31, 1935, in the principal amount of \$133,000.”

Letter of January 14, 1936, from Keenan to Sargent, as follows:

“This will acknowledge receipt of your letter of January 4, transmitting the Exhibit “A”, Supplement No. 9, containing the deposit of \$133,000.00 principal face amount of Merced Irrigation bonds which were purchased for the Federal Reserve Bank of San Francisco December 31, 1935.”

Letter of January 31, 1936, from Sargent to Keenan, as follows:

“Attached hereto you will find Supplement No. 10, Exhibit “A”, showing bonds purchased by the Reconstruction Finance Corporation through the Federal Reserve Bank of San Francisco up to and including January 30, 1936, in the principal sum of \$10,000, plus (11) bond interest coupons belonging to Mrs. Mary Eva Butin, Coupon No. 23 due July 1, 1936, which did not accompany her bonds when they were originally deposited.”

Letter of April 30, 1936, from Sargent to Keenan, as follows:

“Please find attached hereto Supplement No. 11 to Exhibit “A”, showing bonds purchased by the Reconstruction Finance Corporation through the Federal Reserve Bank of San Francisco, as of April 27, 1936, in the principal amount of \$53,000.”

Letter of May 6, 1936, from Emil Schram, Chief, Drainage Levee and Irrigation Division of Reconstruction Finance Corporation, to Sargent, as follows:

“This will acknowledge receipt of your letter dated April 30th, transmitting Supplement No. 11 to Exhibit “A”, containing record of bonds in the amount of \$53,000 purchased by the Federal Reserve Bank of San Francisco, as of April 27, 1936.” [542]

Letter of June 2, 1936, from Sargent to Schram, as follows:

“Attached is Supplement No. 12 to Exhibit “A”, showing bonds purchased by the Reconstruction Finance Corporation through the Federal Reserve Bank of San Francisco, as of May 29, 1936, in the principal amount of \$31,000.”

Letter of June 10, 1936, from Schram to Sargent as follows:

“This will acknowledge receipt of your letter of June 2nd, enclosing Supplement No. 12

to Exhibit "A", covering \$31,000 principal amount of bonds of the above captioned District purchased by this Corporation through the Federal Reserve Bank of San Francisco, as of May 29, 1936."

Telegram of June 23, 1937, from Sargent to Keenan as follows:

"Please forward at once necessary instructions to Federal Reserve Bank of San Francisco to purchase for account of Reconstruction Finance Corporation Forty One Thousand Par Value of Merced Old Securities in accordance with terms of original cash plan stop will it be proper to use same procedure for each deposit of bonds hereafter."

Telegram of June 26, 1937, from W. R. Satterfield, counsel for Reconstruction Finance Corporation, to Sargent, as follows:

"Retel Twenty Third we are preparing necessary instructions to Federal Reserve Bank authorizing purchase any outstanding bonds presented on or before July thirty one thirty seven accordance terms original disbursement instructions as amended." [543]

PETITIONER'S EXHIBIT NO. 22

was the Merced Irrigation District legal tax rate for year 1939-40 under Section 39 Irrigation District Act, assuming the district should be required to levy such rate, reading as follows: [544]

Merced Irrigation District

LEGAL TAX RATE FOR YEAR 1939-40
UNDER SEC. 39 IRRIGATION DISTRICT ACT

Bond Service Obligations	Bond Int. Coupons	Bond Principal	Total
Jan. 1, 1933 & Prior (Default)	\$ 17,905.		\$ 17,905.
July 1, 1933	475,400.		475,400.
Jan. 1, 1934	475,400.	\$ 63,000.	538,400.
July 1, 1934	473,510.		473,510.
Jan. 1, 1935	473,510.	67,000.	540,510.
July 1, 1935	471,500.		471,500.
Jan. 1, 1936	471,500.	71,000.	542,500.
July 1, 1936	469,370.		469,370.
Jan. 1, 1937	469,370.	85,000.	554,370.
July 1, 1937	466,820.		466,820.
Jan. 1, 1938	466,820.	100,000.	566,820.
July 1, 1938	463,820.		463,820.
Subtotal, Nov. 1, 1938	5,194,925.	386,000.	5,580,925.
Jan. 1, 1939 (Default)	463,820.	120,000.	583,820.
July 1, 1939	460,220.		460,220.
Jan. 1, 1940 (Maturing)	460,220.	140,000.	600,220.
July 1, 1940	456,020.		456,020.
Totals	\$7,035,205.	\$646,000.	\$7,681,205.
Plus—Accrued Interest on Registered Coupons & Bonds to Dec. 31, 1938 @ 7%.....			1,066,890.
Total Bond Service Obligations			\$8,748,095.
Less—Payments to R. F. C. to 7-1-39, inclusive.....		\$1,127,485.	
Available Cash Balance, Sept. 30, 1939 (Estimated)		1,200,000.	2,327,485.
Total Bond Service Obligations, Less Credits			6,420,610.

Tax Levy Required (Rate \$68.83 per \$100.00 valuation)

Gross Tax Rolls \$11,245,640. @ \$68.83		
Amount of Levy	7,553,658.	
Less—15% Allowance for Delinquent Taxes.....	1,133,048.	\$6,420,610.

Note:**Default as of Nov. 1, 1938**

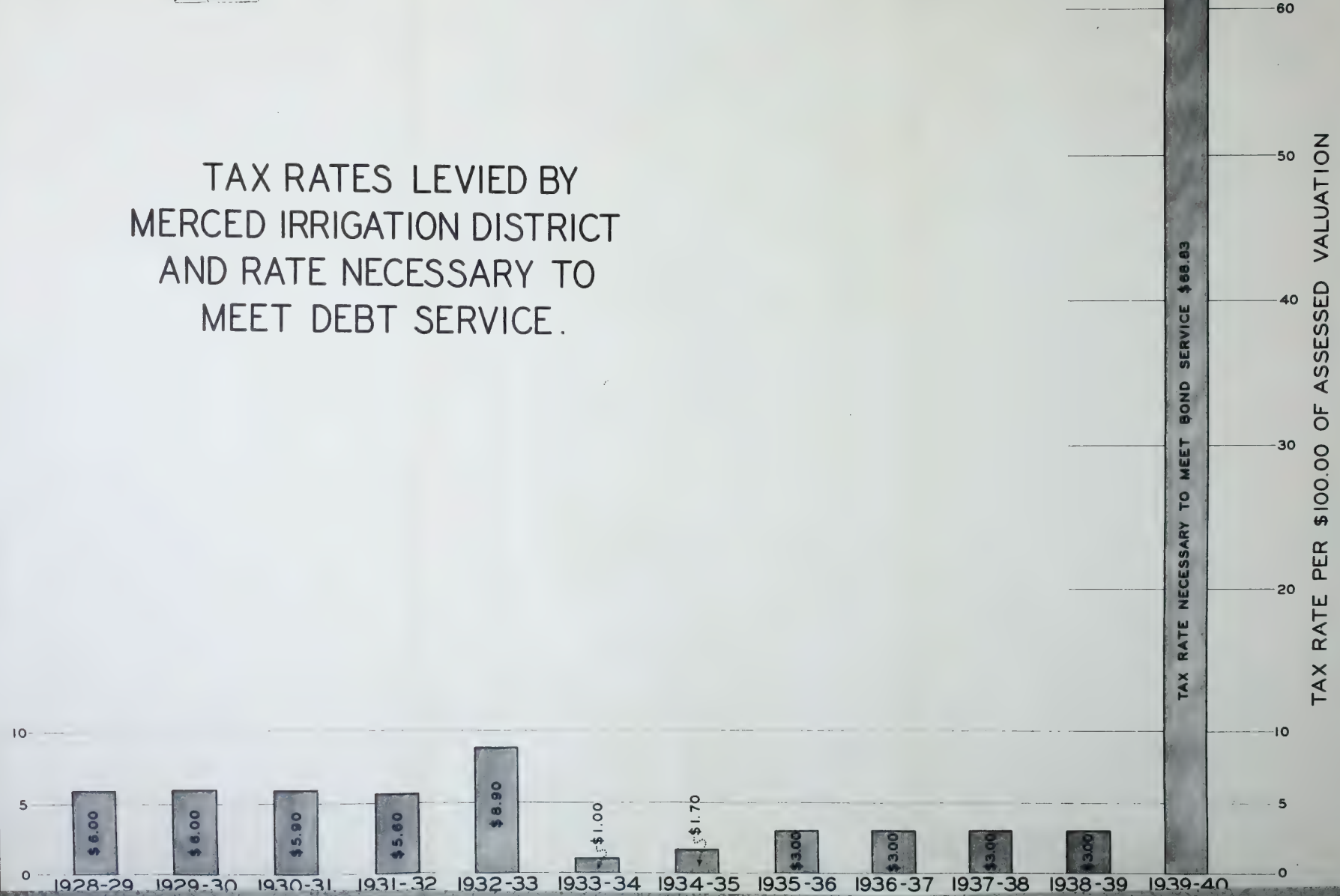
Bond Interest	5,194,925.	
Bond Principal	386,000.	5,580,925.
Int. on Reg. Coupons & Bonds.....		1,004,887.
		<u>\$6,585,812.</u>
		[545]

PETITIONER'S EXHIBIT NO. 23

The following is a photostat. This exhibit was a chart indicating tax rates.

No. 23
Exhibit
Filed
U.S. DISTRICT COURT
S.D. CALIF.
SAN FRANCISCO
JAN 17 1939

TAX RATES LEVIED BY
MERCED IRRIGATION DISTRICT
AND RATE NECESSARY TO
MEET DEBT SERVICE.



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PETITIONER'S EXHIBIT NO. 24

The following is a photostat. This exhibit was a chart representing bond service costs.



IN DEFAULT NOVEMBER 1, 1938.

BOND INTEREST

\$5,194,925

BOND PRINCIPAL

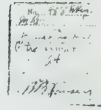
386,000

INTEREST ON REGISTERED COUPONS

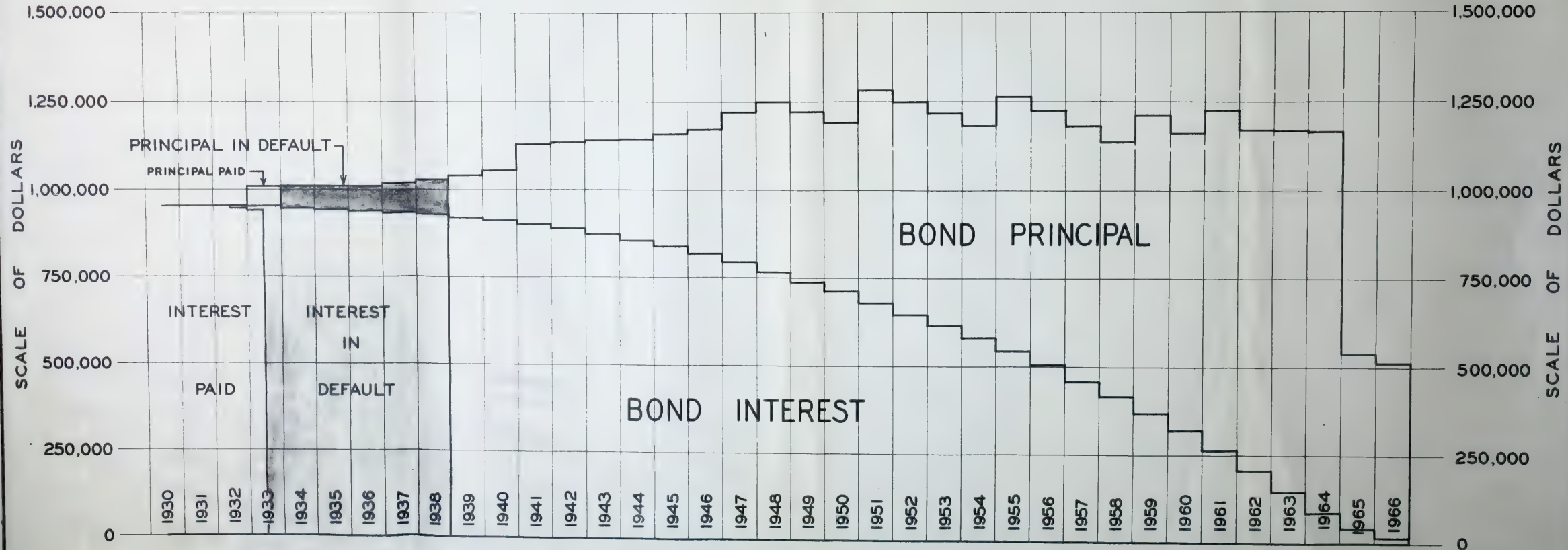
1,004,887

TOTAL

\$6,585,812



BOND SERVICE COSTS AND DEFAULTS MERCED IRRIGATION DISTRICT



PETITIONER'S EXHIBIT NO. 25

was a record showing tax levies, resulting delinquencies and delinquencies made up, in Merced Irrigation District lands, as follows:

Merced Irrigation District

STATEMENT OF DELINQUENT TAX ROLLS
AS OF NOVEMBER 1, 1938

	Valuation	Rate	Amount Levy	Less Current Tax Collections To Del. Date
1928-29	\$20,686,900.	6.00	\$1,242,393.00	\$1,124,143.10
1929-30	20,279,175.	6.00	1,216,750.50	1,099,654.86
1930-31	20,246,775.	5.90	1,194,585.35	983,988.46
1931-32	19,159,570.	5.60	1,071,567.84	670,206.25
1932-33	12,873,880.	8.90	1,148,483.04	427,294.48
1933-34	12,292,410.	1.00	123,044.10	84,068.84
1934-35	12,158,405.	1.70	206,690.00	169,411.84
1935-36	12,078,870.	3.00	362,409.85	304,671.16
1936-37	11,420,790.	3.00	342,946.70	311,784.00
1937-38	11,468,155.	3.00	344,044.65	320,516.17

Totals.....	\$7,252,915.03	\$5,495,749.16
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Delinquent Last Monday June		Less Del. Tax Collections 7-1-29 to 11-1-38		Uncollected Balance	
Amount	Percent			Amount	Percent
		x 35.90			
1928-29	\$118,249.90 9.52	\$ 56,000.62		\$ 62,213.38	5.01
		x 1,707.56			
1929-30	117,095.64 9.62	46,003.11		69,384.97	5.70
		x 7,066.49			
1930-31	210,596.89 17.63	79,331.69		124,198.71	10.40
		x 26,415.40			
1931-32	401,361.59 37.45	225,411.21		149,534.98	13.95
		x 52,820.89			
1932-33	721,188.56 62.80	452,115.60		216,252.07	18.83

[548]

	Delinquent Last Monday June		Less Del. Tax Collections 7-1-29 to 11-1-33		Uncollected Balance	
	Amount	Percent			Amount	Percent
			x	2,949.03		
1933-34	\$38,975.26	31.67		18,106.43	17,919.80	14.56
			x	352.28		
1934-35	37,278.16	18.03		16,744.78	20,181.10	9.76
			x	235.22		
1935-36	57,738.69	15.93		21,760.40	35,743.07	9.82
1936-37	31,162.70	9.09		18,118.66	13,044.04	3.80
1937-38	23,528.48	6.84		3,974.41	19,554.07	5.68
Totals	\$1,757,175.87	25.09		\$1,029,149.68	\$728,026.19	10.04

	Plus	Less		Amount
	Pen. & Costs Added	Lands Deeded	*Pen. & Costs Dropped	Delinquent 11-1-38
1928-29	\$ 14,560.85	\$ 76,738.13	\$ 36.10	\$
1929-30	13,570.67	78,611.79	1,034.46	3,309.39
1930-31	19,857.35	122,930.47	4,700.24	16,425.35
1931-32	47,337.08	134,010.63	18,117.03	44,744.40
1932-33	58,870.74	148,185.10	15,928.57	111,009.14
1933-34	4,793.00	14,782.31	1,430.68	6,498.81
1934-35	5,212.61	21,850.44	617.10	2,926.17
1935-36	5,908.21	35,951.63	393.96	5,305.69
1936-37	3,606.58	12,991.13	44.90	3,614.59
1937-38	2,926.98	10,193.86	24.80	12,262.39
Totals	\$176,644.07	\$656,245.49	\$42,327.84	\$206,096.93

*Includes net adjustments of \$39.75, (cancellation of assessments, etc.)

xAmounts paid on partial redemptions under "Ten Year Installment Plans". (\$91,582.77)

[549]

District

ING NOVEMBER 1, 1938

FUNDS

	Bond Int. & Prin.	Refunding		TOTAL ALL FUNDS
		Bond Int.	Reserve	
6	\$ 1,209.80	\$676,132.34	\$373,860.64	\$ 1,578,446.14
0				5,200.00
3				206,096.93
9				39,364.99
-				
3	1,209.80	676,132.34	373,860.64	1,829,108.06
-				
8				19,260,927.54
9				98,204.49
-				
7				19,359,132.03
-				709,338.83
7				18,649,793.20
5	1,209.80	676,132.34	373,860.64	20,478,901.26
3				13,810.93
	5,076,185.00			5,076,185.00
	387,000.00			387,000.00
	1,004,887.54			1,004,887.54
0				8,739.00
0				80,000.00
-				
3	6,468,072.54			6,570,622.47
-				
5				675,355.35

Refunding Bond Int. Surplus.....

Refunding Reserve ".....

Capital Surplus.....

195,386.83 2,263,4

Total Capital Liabilities.....

16,386,386.83 2,938,7

Total Liabilities.....

16,386,386.83 3,041,3

* Represents tax sale certificates after deducting partial payments
x Crocker-Huffman Contract obligations in amount of \$185,256.57 p

[Endorsed]: Petitioner's Exhibit No. 26. Filed
Nov. 23, 1938.

		676,132.34		676,132.34
			373,860.64	373,860.64
7				2,458,793.20
-				
2	6,466,862.74	676,132.34	373,860.64	13,908,278.79
-				
5	1,209.80	676,132.34	373,860.64	20,478,901.26
-				

e under "Installment Plans".

le July 1st years 1939-1940-1941.

PETITIONER'S EXHIBIT NO. 27

was a record showing power sales of the Merced Irrigation District, reading as follows: [551]

Merced Irrigation District

ELECTRICAL ENERGY FURNISHED THE
SAN JOAQUIN LIGHT & POWER CORP.,
UNDER CONTRACT DATED FEBRUARY
21, 1924, FOR YEARS 1926 TO 1938, INC.

<u>Date</u>	<u>K. W. H.</u>	<u>Rate</u>	<u>Amount</u>
1926			
June	4,809,660	.0045	\$ 21,644.39
July	1,359,000	.002	2,718.00
“	7,325,000	.0045	32,962.50
Aug.	1,449,000	.0045	6,520.52
“	364,000	.002	728.00
Nov.	46,000	.0045	207.00
Dec.	1,825,870	.0045	8,216.42
Yr. Total	17,178,730		\$ 72,996.83
1927			
Jan.	99,050	.0045	\$ 445.73
Feb.	6,740,310	.0045	30,331.40
Mar.	12,776,780	.0045	57,495.51
Apr.	16,818,590	.0045	75,683.65
May	18,032,100	.0045	81,144.45
June	17,647,630	.0045	79,414.33
July	18,844,960	.0045	84,802.32
Aug.	15,312,290	.0045	68,905.31
Sept.	10,604,540	.0045	47,720.43
Oct.	3,548,090	.0045	15,966.41
Nov.	1,468,490	.0045	6,608.20
Dec.	4,696,120	.0045	21,132.54
Yr. Total	126,588,950		\$569,650.28

<u>Date</u>	<u>K. W. H.</u>	<u>Rate</u>	<u>Amount</u>
1928			
Jan.	4,603,320	.0045	\$ 20,714.94
Feb.	4,808,050	.0045	21,636.23
Mar.	7,423,360	.0045	33,405.12
Apr.	17,990,130	.0045	80,955.58
May	19,072,870	.0045	85,827.92
June	18,428,370	.0045	82,927.66
July	16,639,200	.0045	74,876.40
Aug.	11,852,240	.0045	53,335.08
Sept.	8,202,780	.0045	27,912.51
Oct.	925,860	.0045	4,166.37
<hr/>			
Yr. Total	109,946,180		\$485,757.81
1929			
Feb.	1,490,420	.0045	\$ 6,706.89
Mar.	3,730,990	.0045	16,789.45
Apr.	6,657,250	.0045	29,957.62
May	11,757,130	.0045	52,907.09
June	12,992,340	.0045	58,465.53
July	13,289,230	.0045	59,801.54
“	2,560,000	.002	5,120.00
Aug.	6,808,000	.0045	30,636.00
“	1,709,000	.002	3,418.00
Sept.	103,460	.0045	465.57
“	33,000	.002	66.00
<hr/>			
Yr. Total	70,259,460		\$296,412.57
1930			
Apr.	10,936,110	.0045	\$ 49,212.50
May	14,088,190	.0045	63,396.85
June	16,716,120	.0045	75,222.54
July	14,615,000	.0045	65,767.50
“	3,362,000	.002	6,724.00
Aug.	8,634,000	.0045	38,853.00
“	2,130,000	.002	4,260.00
Sept.	1,093,510	.0045	4,920.80
“	287,000	.002	574.00
<hr/>			
Yr. Total	71,862,930		\$308,931.19

<u>Date</u>	<u>K. W. H.</u>	<u>Rate</u>	<u>Amount</u>	
1931				
Mar.	538,670	.0045	\$ 2,424.01	
“	42,000	.002	84.00	
Apr.	5,825,920	.0045	26,216.64	
“	1,409,000	.002	2,818.00	
May	7,674,880	.0045	34,536.96	
“	763,000	.002	1,526.00	
June	5,601,660	.0045	25,207.47	
“	1,273,000	.002	2,546.00	
July	108,030	.0045	486.13	
“	36,000	.002	72.00	
Yr. Total	23,272,160		\$ 95,917.21	
1932				
Jan.	8,269,950	.0045	\$ 37,214.78	
Feb.	12,733,910	.0045	57,302.60	
Mar.	14,791,150	.0045	66,560.18	
April	15,359,660	.0045	69,118.47	
May	18,857,070	.0045	84,856.82	\$ 3,559.50
June	19,632,350	.0045	88,345.58	7,366.50
July	19,642,220	.0045	88,389.99	4,738.50
Aug.	15,844,520	.0045	71,300.36	
Sept.	9,764,900	.0045	43,942.05	
Oct.	3,143,060	.0045	14,143.77	
Yr. Total	138,038,790	.0045	\$621,174.60	(\$605,630.18)
1933				
Feb.	6,067,170	.0045	\$ 27,302.27	
Mar.	2,999,980	.0045	13,499.91	
Apr.	7,849,210	.0045	35,321.45	
May	8,639,180	.0045	38,876.31	
June	15,310,780	.0045	68,898.51	
July	16,090,980	.0045	72,409.41	
Aug.	10,630,140	.0045	47,835.63	
Sept.	2,840,310	.0045	12,781.40	
Yr. Total	70,427,750		\$316,924.89	

Date	K. W. H.	Rate	Amount
1904			
Mar	2,974,140	0045	\$ 13,392.81
Apr	12,699,400	0045	57,147.30
May	11,564,840	0045	52,041.79
June	8,964,150	0045	40,338.68
July	6,448,000	0045	29,026.00
<hr/>			
Yr. Total	42,650,530		\$191,936.59

1905			
Jan	1,002,650	0045	\$ 4,513.43
Feb	5,804,580	0045	26,229.48
Mar	14,304,800	0045	64,505.70
Apr	17,200,020	0045	77,404.59
May	18,584,780	0045	83,674.51
June	17,995,250	0045	80,973.63
July	18,564,090	0045	83,528.41
Aug	15,813,130	0045	71,609.09
Sept.	10,177,150	0045	45,797.18
Oct	3,066,670	0045	13,807.29
<hr/>			
Yr. Total	122,454,980		\$551,114.49

[553]

1906			
Feb	8,877,400	0045	\$ 39,848.30
Mar	18,580,100	0045	83,668.95
Apr	17,994,970	0045	80,973.32
May	18,594,310	0045	83,674.40
June	17,994,560	0045	80,973.52
July	18,594,740	0045	83,676.33
Aug	16,504,600	0045	74,270.79
Sept.	8,658,880	0045	40,450.56
Oct	2,064,730	0045	13,791.56
<hr/>			
Yr. Total	129,871,250		\$564,429.64

1907			
Jan	225,000	0045	\$ 1,004.49
Feb	14,911,480	0045	67,201.66
Mar	18,501,020	0045	83,664.09

<u>Date</u>	<u>K. W. H.</u>	<u>Rate</u>	<u>Amount</u>
Apr.	17,993,130	.0045	80,969.09
May	18,594,690	.0045	83,676.11
June	17,995,260	.0045	80,978.67
July	18,588,860	.0045	83,649.87
Aug.	15,894,110	.0045	71,523.50
Sept.	8,808,160	.0045	39,636.72
Oct.	2,178,830	.0045	9,804.74
Dec.	5,189,890	.0045	23,354.51

Yr. Total	138,969,430		\$625,363.45
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1938

Jan.	14,652,760	.0045	\$ 65,937.42
Feb.	15,423,490	.0045	69,405.71
Mar.	18,591,370	.0045	83,661.17
Apr.	17,992,980	.0045	80,968.41
May	18,594,420	.0045	83,674.89
June	17,995,660	.0045	80,980.47
July	18,595,830	.0045	83,681.24
Aug.	18,496,790	.0045	83,235.56
Sept.	12,479,030	.0045	56,155.64
Oct.	4,334,100	.0045	19,503.45

Yr. Total	157,156,430		*\$707,203.96
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* Amount of energy produced during Year 1938.....\$707,203.96

Plus—Payment for energy produced in Dec. 1937, received in
 Jan. 1938 23,354.51

\$730,558.47

Less—Amount of energy produced in Oct. 1938, due Nov. 21, 1938 19,503.45

(Uncollected Nov. 1, 1938)

Total Power Income for period,

Jan. 1, to Nov. 1, 1938.....\$711,055.02

per Income Statement

RECAPITULATION

<u>Full Year</u>	<u>Amount</u>
1927	\$ 569,650.28
1928	485,757.81
1929	296,412.57
1930	308,931.19
1931	95,917.21
1932	605,630.18
1933	316,924.89
1934	191,936.39
1935	551,114.49
1936	584,429.64
1937	625,363.45
1938	707,203.96

Total.....\$5,339,272.06=12 Year Average

\$444,939.33

[554]

PETITIONER'S EXHIBIT NO. 28

was a record showing properties deeded to Merced Irrigation District on account of nonpayment of delinquent taxes, and properties sold, as follows:

<u>Year</u>	<u>Number of Parcels</u>	<u>Rural Acreage</u>	<u>Number of City & Town Lots</u>	<u>Assessed Valuation Rural</u>
1928	5	250	1	\$ 12,460.
1929	37	3,185	20	125,475.
1930	6	1,347	1	18,425.
1931	126	4,065	141	220,410.
1932	102	5,577	59	282,790.
1933	1	142	—	7,840.
1934	69	1,975	73	95,765.
1935	41	2,452	—	138,550.
1936	481	11,689	605	677,030.
1937	94	4,222	139	141,970.
1938 to 11/1/38.....	157	1,684	511	95,950.
Total.....	1,119	36,588	1,550	\$1,817,665.

Year	Assessed Valuation City & Town Lots	Delinquent Taxes Rural	Delinquent Taxes City & Town Lots
1928	\$ 200.	\$ 7,738.44	\$ 96.18
1929	750.	101,601.68	605.12
1930	200.	14,321.30	123.80
1931	16,165.	121,406.49	6,894.35
1932	9,570.	145,319.62	3,279.91
1933	—	3,467.34	—
1934	3,500.	43,530.88	1,173.23
1935	—	36,946.70	—
1936	87,000.	210,662.66	26,141.76
1937	5,295.	76,160.03	2,055.33
1938 to 11/1/38.....	21,925.	20,659.37	4,873.84
Total.....	\$144,605.	\$781,814.51	\$45,243.52
			[555]

PROPERTIES SOLD

Year	Number of Parcels	Rural Acreage	Number of City & Town Lots	1938-39 Assessed Valuation Rural
1928	1	—	1	\$ —
1929	3	144	—	10,140.
1930	16	3,681	3	96,265.
1931	3	24	—	2,190.
1932	4	235	1	6,505.
1933	1	—	1	—
1934	8	89	3	6,630.
1935	5	44	2	3,305.
1936	57	1,009	38	47,370.
1937	71	985	99	63,105.
1938 to 11/1/38.....	50	218	127	13,240.
Total.....	219	6,429	275	\$248,750.

Year	1938-39 Assessed Valuation		Sales Price	
	City & Town Lots		Rural	Sales Price City & Town Lots
1928	200.	\$	—	\$ 143.75
1929	—		4,816.59	—
1930	120.		38,196.83	225.00
1931	—		1,225.00	—
1932	75.		2,614.93	25.60
1933	75.		—	19.40
1934	610.		1,989.21	322.26
1935	1,500.		545.87	407.20
1936	4,755.		21,002.72	2,162.43
1937	13,925.		32,778.29	3,693.86
1938 to 11/1/38.....	4,830.		5,759.93	1,869.65
Total.....	\$26,090.		\$108,929.37	\$8,869.15

[556]

	Number of Parcels	Rural Acreage	1938-39 Assessed Valuation	
			City & Town Lots	Rural
Recapitulation:				
Deeded	1,119	36,588	1,550	\$1,817,665.
Sold	219	6,429	275	248,750.
Balance	900	30,159	1,275	\$1,568,915.

	1938-39 Assessed Valuation		Sales Price	
	City & Town Lots		Rural	Sales Price City & Town Lots
Deeded	\$144,605.		\$781,814.51	\$45,243.52
Sold	26,090.		108,929.37	8,869.15
Balance	\$118,515.		\$672,885.14	\$36,374.37

[557]

PETITIONER'S EXHIBIT NO. 29

This was a report upon an investigation of the affairs of the district made by the California Districts Securities Commission for the year 1933 reading as follows: [558]

California Districts Securities Commission
REPORT UPON AN INVESTIGATION OF
THE AFFAIRS OF MERCED IRRIGA-
TION DISTRICT

Merced County, California

As required under the terms of Section 11 of the
California Districts Securities Commission Act

October 1933 [559]

Report Upon Merced Irrigation District

October 1933

I. Physical Properties

(a) Location and Area of District

Merced Irrigation District, organized in 1919, is located in Townships 4 to 8 south, Ranges 10 to 16 east, M.D.B. & M., Merced County, and lies contiguous to and south of the Merced River and east of the San Joaquin River. North of the Merced River is an additional detached portion of the District which lies west of Snelling between Dry Creek and Ingalsbe Slough. Included within the District boundaries are the cities of Merced, Atwater and Livingston and the smaller communities of Amsterdam, Cressy, Arena, Winton, Tuttle, Planada, Lingard and Le Grand.

Railroad transportation is supplied by the main lines of the Southern Pacific and Santa Fe Railroads, [560] the Oakdale branch of the Southern Pacific Railroad and the Yosemite Valley Railroad. The Golden State Highway parallels the Southern Pacific Railroad.

Minor changes in the District boundaries since its organization have fixed the gross area at approximately 190,000 acres. According to district figures, as reported for 1932, this general area is segregated by the district as follows:

Gross Area	190,000 Acres
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Canals	4,000 ac.
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Roads	8,200 ac.	12,200	''
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Total "assessable" area	177,800	''
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and this gross assessable area is further divided as follows:

Rural Area	172,000 Acres
------------------	---------------

Cities, Towns and	
-------------------	--

Subdivisions	5,000	''
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Railroads	800	''
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Total	177,800	''
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A classification in round figures of the rural area has been reported by the Assessor as follows:

Area above gravity	
--------------------	--

irrigation	18,000 Acres
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Area of swamp and	
-------------------	--

waste land	5,000	''
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Area of land of doubtful	
--------------------------	--

agricultural value	10,000	''
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Area (net) warranting	
-----------------------	--

cultivation	139,000	''
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	172,000	''
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Making up the 172,000 acres of agricultural [561] lands there are reported to be 2,800 separate farm holdings which indicates the average size of farms to be about 60 acres, but this average size of farms must be viewed in the light of the following regrouping of ownerships as reported for 1932:

No. of Ownerships	Acres Size	Total Acreage
18	500 to 1000	12,922
16	1000 to 2000	22,045
4	2000 to 5000	15,237
1	Over 5000	13,790
—		—
39		63,994

These relatively few large holdings comprise more than 1/3 of the total farmable area which indicates that a considerable part of the district must be subdivided and settled before full development is achieved. While most of the large acreages are either not developed or used principally for pasturage or grain, a few have been highly developed, such as the 3,800 acre fruit ranch of the California Packing Corporation.

(b) Source and Sufficiency of Water Supply

The main source of the water supply for the Merced Irrigation District is the Merced River, which drains a watershed of about 1000 sq. mi. in the Sierra Nevada, including a large part of Yosemite National Park. The district's water rights are founded upon the old appropriation of Crocker-

Huffman [562] Land and Water Company and on permits Nos. 912, 913 and 914 granted by the State Division of Water Rights on September 27, 1921. Permits 912 and 913 authorize the diversion of 2400 cu. ft. per sec. for power development, with storage and re-storage up to a total of 50,000 acre-feet per year. Permit 914 is for irrigation and authorizes the storage of 300,000 acre-feet per annum, and diversion into the district canals of a maximum of 1,500 cu. ft. per sec. with certain provisions. These rights appear to be well established, particularly in view of the agreements made with other users.

The run-off is impounded behind Exchequer Dam in Lake McClure, which has a reservoir capacity of 289,000 ac. ft. The dam, one of the largest in the country, has a height of 326 feet and a length of 950 feet, being 221 feet thick at the base and 12 feet at the crest. After passing through the power house adjoining the dam, or over the spillways, the water is diverted to the district's main canal at the Crocker-Huffman Dam located about two miles below Merced Falls. This main canal supplies water to four laterals which cover the area north of Merced and extends 17 miles to Lake Yosemite located 5 miles east of Merced. The area directly north and east of Merced is served by a canal diverting from Lake Yosemite, and the Le Grand Canal, diverting from the same lake, follows the eastern boundary of the district about 12 miles to Planada and Le Grand. [563]

That part of the District lying north of Merced River and containing about 9,400 acres is supplied by a canal diverting from the river at Merced Falls, and about 6,000 acres of high land near the eastern end of the District is supplied by five booster plants. Additional water is supplied by the operation of 87 electrically driven drainage pumps.

A result of the increasing use of water for intensive farming has been the rise in the water table which must be taken care of by drainage and by the prevention of seepage.

Since storage was started in Lake McClure, the water supply on the whole, has been sufficient. Wasting of water on poorly prepared land has been reduced by the introduction of better practice and the enforcement of a rule to secure more efficient use. Waste has been further diminished since the district has levied annual tolls for water delivered in excess of 4 acre-feet per acre per season. However, the delivery of water to some of the marginal lands above the high line canal at a cost to the district greatly in excess of possible returns and the delivery of water to the lowlands in the most southerly part of the district, which entails large percentage seepage losses with slight returns from the land, is not an economic use of water. [564]

(c) Soils of District

Topographically the Merced Irrigation District area consists of a wide belt of gently sloping land which has been built up by alluvial-fan deposits of the streams issuing from the mountains and

foothills on the northeast. The alluvial fan of the Merced River reaches nearly to the San Joaquin River and the broad flat distal ends of the smaller stream fans extend to the San Joaquin River flats.

The soils of the district, derived from recent alluvium, are generally of the Fresno, Madera and San Joaquin series. Fresno and Madera sands cover the main portion of the area north of Merced and west of the Santa Fe Railroad. A relatively small strip of Madera clay loam runs north and southwesterly from Merced. In general, Madera loams occupy most of the area centering around Tuttle and lying between Merced and Planada, Lingard and Le Grand. The triangle contiguous to Livingston, Winton and Atwater is composed largely of undifferentiated Oakley and Madera sands; and, the detached portion of the district west of Snelling is covered by Oakdale sandy loam, with the best grade of soil found along the terraces adjoining the Merced River. That part of the district lying south of Livingston is composed of Fresno sands containing alkali lands, particularly in the lower reaches. This general description [565] should be modified by the fact that soil variations occur in marked degree within short distances throughout the Merced Irrigation District.

A truer picture of soil conditions is presented in a recent survey and classification, as developed by J. S. Cone and R. L. Underhill, based primarily on crop production, but with necessary consideration given to the following factors: depth of soil, drain-

age, crop range, topography, fertility, location, frost and wind hazard. In general, the best state and local paved highways traverse the areas of the district which have the highest grade of soil and the remote areas and marginal lands, not as easily accessible, are usually the poorest. Characteristically, the best grade of soil is found along the ridges formed by the river and creeks; the poorer grade is located in the troughs between creeks; and, in parts of the marginal highlands, the top soil is relatively thin with hardpan close to the surface. In the most northerly part of the district, the surface gravel content increases with higher altitudes.

II. Production

(a) Detailed Crop Report

Up to 1890, farming in the Merced area was of two types, very large cattle ranches and grain ranches averaging [566] about 1,000 acres in size. In the year mentioned, colonization and the development of small irrigated farms was begun; and, this tendency toward small farm development involved the actual settling of the land and its cultivation by the owners. With the better understanding of the proper handling of different soil types a wide crop range has been developed. The failure of the early colonists is an ever present object lesson, and trees and vines unadapted to the particular locality have been or must be pulled out. In certain instances and on the highest grade of

soils, crops in excess of the state average have been produced.

The estimate of production is based upon detail crop reports gathered by the ditch-tenders of the district under the supervision of L. W. Hesse, District Superintendent. These reports are made upon separate section maps showing each 10 acre tract, the total assessable area and the acreage in each crop. Also, detail reports were secured from large scale producers; thus, a reliable summary of all crops produced in the Merced Irrigation District for the current year has been assembled and shown in the report of J. S. Cone, dated Sept. 26, 1933 and formally submitted to the Board of Directors at its meeting on that date. This report which has taken over a month to compile has been followed since its inception and will be referred to hereinafter as the Cone Report. [567]

(b) Gross Estimated Production

Where the production records of the larger corporate and individual growers are available, the estimate in the Cone Report is exact. But, on the remaining areas, the yield has been estimated, instead of securing the data from the smaller individual grower, because the time required to make the survey was limited.

A number of factors enter into the gross estimated production for the current year. On lands well suited to particular crops the acreage has shown a slight decline but, crops planted in unsuitable locations are deteriorating. Production is largely

influenced by price, weather and soil conditions, and efficient farm practice. The age of the orchard trees was considered although there are relatively few new plantings and non-bearing orchards. Among the adverse factors, which cannot be reduced to a numerical index, are credit restriction, absentee ownership, foreclosures and delinquencies, alkali and seepage and the uncontrolled spreading of Johnson grass and weeds. However, a sincere endeavor was made to obtain the best collective judgment on both yield and prices.

III. Value of Crops

(a) Estimated Prices on Crops Produced

For the crops that are already harvested, the record of prices is available; but, to forecast future prices is [568] a hazardous occupation in view of their present, violent fluctuations. At present, wine grape prices are very unstable and vary greatly in different sections of the state; but, the raisin industry marketing agreement may stabilize prices through control of surplus. The Agricultural Adjustment Administration has started the reduction of wheat and cotton acreage, with producers to benefit from funds to be raised by a processing tax on these crops. Although labor conditions in relation to some crops are somewhat unsettled, continued efforts of associations and governmental agencies may tend toward stabilization of prices, with a probable slightly upward trend.

Data on crop prices has been gathered for the Merced Irrigation District crop survey from the following sources:

Market reviews of the State-Federal Crop Reporting service; local Agricultural Commissioner and Farm Advisor; Giannini Foundation of Agricultural Economics; packers and producers; district records, enterprise efficiency studies of the Extension Service covering major crops in similar areas and experience of persons familiar with local conditions. For the harvested crops, records of actual sales were secured.

In estimating both production and prices, normal harvesting conditions were assumed. Early storms or foggy weather would reduce both yield and prices on such crops as figs, raisins, beans, cotton and rice. [569]

EXHIBIT "B"

1933 CROP REPORT

MERCED IRRIGATION DISTRICT

	Acreage	Production	Acreage Value	Gross Value
Alfalfa	14,357	31 $\frac{1}{3}$ Tons	\$ 25.00	\$ 358,925
Almonds	2,743	580 lbs.	46.40	127,275
Apricots	882	500 lbs.	37.50	33,075
Beans	4,857	61 $\frac{1}{2}$ Sacks (585#)	20.48	99,471
Corn	3,651	1000 lbs.	12.00	43,812
Cotton	4,333	400 "	36.00	155,988
Figs, drying	5,877	1600 "	24.00	141,048
Figs, Kadotas	2,440	800 "	14.00	34,160
Garden Truck	562		137.00	76,994
Grain, Irrig.	11,528	1350 "	11.48	132,341

	Acreage	Production	Acreage Value	Gross Value
Grain, Non-Irrig.	14,280	650 lbs.	5.20	74,256
Grapes				
Raisin	5,512	2000 "	60.00	330,720
Wine	3,527	2 $\frac{2}{3}$ tons	34.67	122,281
Shipping	495	3 "	36.00	17,820
Melons	683	5 "	46.25	31,589
Pasture, Irrigated	8,898		1.50	13,347
Pasture, Non-Irrigated.....	29,424		.75	22,068
Peaches				
Clings	2,919	6 tons	120.00	350,280
Drying	2,428	1600 lbs.	88.00	213,644
Shipping	495	5 $\frac{1}{2}$ tons	82.50	40,837
Plums	226	1 ton	20.00	4,520
Rice	5,258	2700 lbs.	47.25	248,440
Sudan Grass (Pasture).....	1,533		8.00	12,264
Sweet Potatoes	4,208	3375 lbs.	67.50	284,040
Tomatoes	422	350 lug Shipping @ .45 per lug and 1500# canning @ \$8.25 per ton.....	163.69	69,077
MISCELLANEOUS CROPS				
Wild Hay	760	$\frac{2}{3}$ of a ton.....	3.33	2,531
Sunflowers	259	500 lbs.	10.00	2,590
Walnuts	219	450 lbs.	63.00	13,797
Ladino Clover (Pasture) ..	95		12.00	1,140
Dallas Grass (Pasture)....	44		16.00	704
Balance of Assorted Crops 123 @ \$30.00 per acre.....				3,690
Total Assessed Acreage in District.....			171,654	3,062,724
Total Crop Acreage including Pasture.....	136,078			
Acreage in Summerfallow.....	4,823			
Acreage in Building Sites.. ..	3,085			
Acreage in Gum Trees.....	219		144,205	
Vacant			27,449	

Note: Included in gross value of crops is the income of District owned lands, \$14,000.00, leaving a gross value of privately owned lands of \$3,048,724.

EXHIBIT "B" of Cone Report, (continued)

	Selling Price per Unit		
Alfalfa.....	\$ 7.50	per	ton
Almonds.....	.08	"	lb.
Apricots.....	150.00	"	ton
Beans.....	.031½	"	lb.
Corn.....	1.20	"	cwt.
Cotton.....	.09	"	lb.
Figs, drying.....	30.00	"	ton
Figs, Kadotas.....	35.00	"	ton
Garden Truck.....			
Grain, Irrigated.....	.85	"	cwt.
Grain, Non-Irrig.....	.80	"	"
Grapes			
Raisin.....	.03	"	lb.
Wine.....	13.00	"	ton
Shipping.....	12.00	"	ton
Melons.....	9.25	"	ton
Pasture, Irrigated			
Pasture, Non-Irrigated			
Peaches			
Clings.....	20.00	"	ton
Drying.....	110.00	"	"
Shipping.....	15.00	"	"
Plums.....	20.00	"	"
Rice.....	1.75	"	cwt.
Sudan Grass (Pasture)			
Sweet Potatoes.....	.02	"	lb.
Tomatoes			
MISCELLANEOUS CROPS			
Wild Hay.....	5.00	"	ton
Sunflowers.....	.02	"	lb.
Walnuts.....	.14	"	lb.
Ladino Clover (Pasture)			
Dallas Grass (Pasture)			

[571]

(b) Gross Value of Crops

From the prices and yields secured as above-noted, the gross value of crops on privately owned

lands in the Merced Irrigation District for 1933 is \$3,048,724. The 1933 crop report is summarized in tabular form in the Cone Report as shown in the preceding table, as Exhibit "B".

IV. Cost of Production

In determining the cost of production of farm crops the Cone Report considered only the following items:

- (a) Cash costs. These costs represent the actual cash outlays by the farmer for goods and materials purchased, such as repairs, supplies and feed, and must be regarded as a first charge against farm income.
- (b) Expense for labor. This includes outside hired labor and/or labor provided by the farmer and his family.

The following items of cost of production were expressly eliminated:

1. Supervision.
2. Depreciation on equipment, buildings and plantings.
3. Interest on investment, and working capital, whether owned or borrowed.
4. County taxes.
5. Merced Irrigation District taxes.

The 1933 costs of production were estimated in the Cone Report in the following manner:

1. Total crop production costs for 1931 (labor and materials only) as computed from rec-

ords obtained [572] for the Economic Survey made in 1932 were taken as a basis. This Economic Survey is known and generally referred to as the Benedict Report.

2. Corrections were made for different total crop acreage in 1933.
3. United States Bureau of Agricultural Economics Index figures for prices paid for commodities bought and for farm wages paid were then used, allowing for 50% increase in wages over the index for April, 1933. This resulted in a cost factor of 78.2% of 1931 costs.

Using the data and method outlined above, the total cost of production of all Merced Irrigation District crops for 1933 is:

Cash Costs	\$2,153,095
Labor	1,114,832
	<hr/>
Total Costs	\$3,267,927

V. District Charges

(a) Operation Costs (Irrigation System Only)

A comparison of operating costs for recent years taken from the annual statement rendered in accordance with the provisions of Section 14a of the California Irrigation District Act together with the budget for 1933 may be set forth as follows:

	1931	1932	1933
Capital expenditures	\$ 80,959	8,847	
General Overhead	33,024	32,925	
Office Expenses	16,389	15,685	
Tax Refunds	1,389	553	
Pumping Plant Refunds	22,190	12,998	
Crocker-Huffman Payments	57,725	57,178	
Insurance and Damages	9,814	10,627	
Irrigation Operations	19,555	113,493	
Drainage "	16,856	67,978	
Powerhouse "	17,378	20,947	
Deeded Tax Prop. Exp.	249	78	
Drainage Contracts	13,636	180	
Total (before depreciation)	\$349,164	341,489	324,796 [573]

Capital expenditures, including building improvements and canal betterments, are not financed by new bonds but are a charge against the general fund and a necessary district expense. The approximate 90% decrease in this item of expense for 1932 reflects the efforts of the District to economize and postpone all but absolutely essential expenditures. This retrenchment was caused largely by reason of the extremely dry year of 1931 resulting in only \$95,917 being received from the sale of power; whereas, the average annual revenue from power over a long period is estimated to be \$450,000.

As less than 5% of the District's 1200 miles of canals and laterals are concrete lined it is essential to continue canal betterment each year in order to reduce costs of repairs, drainage well construction and suits for damages caused by seepage. Recently, a landowner who wanted the District to line the

ditch over his property requested a lower assessed valuation on the grounds that the value of his land had been decreased by excessive seepage. Decreasing general overhead and office expenses indicate efficient management and salary reductions.

V. (b) Other Annual Charges (Exclusive of Bond or Warrant Obligations)

Crocker-Huffman contract payments.

Before the formation of the Merced Irrigation District the Crocker-Huffman Land and Water Company controlled [574] the water system and subdivided and sold its lands with the right to receive certain amounts of water at fixed prices. In January 1922 the District purchased the Crocker-Huffman system for \$2,250,000 but the water-right contracts with the owners had to be adjusted. Under these various contracts 400 acres of land was to receive water free, 2,400 acres paid 62½c per acre, 26,335 acres paid \$1 per acre per annum and 21,582 acres paid \$2.00 per acre per annum.

By a compromise settlement the District acquired the water rights of the purchasers and other benefits and agreed to the payment of \$1,003,000 to be made in equal annual installments over a period of 17 years. Thus, the annual contract payment the District has to meet is about \$60,000 and, this charge which continues up to and including July 1, 1941 properly constitutes a fixed charge against the district.

The total other annual charges, exclusive of bond or warrant obligations but including the above fixed contract payments, are reported to be the sum of \$70,185 for 1933.

The Merced Irrigation District has taken over the obligations of three small drainage districts whose remaining bonds have a par value of about \$63,000. According to their schedule of payments, including interest, these bonds may be completely retired by 1939, as follows: [575]

1933	\$12,794.52
1934	12,294.06
1935	11,793.60
1936	11,293.13
1937	10,792.67
1938	8,042.21
1939	795.00

VI. Other Assessments and Taxes

(a) Overlapping Reclamation, Levee, Improvement or Fire Districts.

The subject of overlapping districts has been investigated by W. W. Bedesen, County Surveyor, whose detail report is accompanied by elaborate charts and graphs.

He reports the total tax charges (fiscal year 1933-34) for county, school districts, municipalities and other overlapping districts as follows:

Cities, General and Special.....	\$117,700	
Road Improvement Districts.....	36,185	
Cemetery Districts	6,313	
Lighting “	1,198	
Mosquito “	4,411	\$165,808
<hr/>		
County and Schools.....	\$323,234	
Grammar School Bonds.....	25,614	
High “ “	23,903	\$372,751
<hr/>		
Total		\$538,559

Merced County Assessed Valuations, 1933-34

Merced County, Total.....	\$32,795,435
“ “ Real Property only	20,322,345
County Assessed Value in	
Merced Irrigation District, Total.....	11,938,999
County Assessed Value in Merced	
Irrigation District, Real Prop. only.....	7,486,441

[576]

Delinquencies

Total of three municipalities and of school districts wholly or partly within the Merced Irrigation District.

	<u>1929-30</u>	<u>1930-31</u>	<u>1931-32</u>	<u>1932-33</u>
Merced City	\$12,550	\$15,550	\$21,287	\$28,181
Livingston	1,581	1,580	1,764	4,386
Atwater	182	566	1,887	4,970
Merced County	60,898	103,065	172,421	261,342

VII. Net Value of Crops

From data taken from the Cone Report as above noted, a condensed summary of production, operation and other charges including taxes and assessments not under the control of the District board of directors may be shown as follows:

Net Value of Crops

Gross Value of Crops.....			\$3,048,724
Cost of Production.....	\$3,267,927		
District Charges:			
General Operation	\$324,796		
Other Charges	70,185	394,981	
Other Assessments & Taxes:			
Overlapping Dists.	\$165,808		
County and School			
Districts	372,751	538,559	\$4,201,467
Deficit			\$1,152,743

VIII. Other District Income

(a) Power Sales

All the power developed at Exchequer Dam is sold to San Joaquin Light and Power Corporation under contracts dated February 21, 1924 and July 7, 1926. The 1924 contract [577] runs for a period of 20 years, with option to the District to continue it for another 20 years; and, the price paid for electric energy delivered at the powerhouse is $4\frac{1}{2}$ mills per k.w.h. Under the 1926 contract, the power company agreed to take power at certain hours not covered by the original contract at a rate of 2 mills per k.w.h.

Early in 1926, Exchequer Dam was completed and storage began on April 20th of that year. As power delivery did not begin until June 23, 1926, the revenue for the remainder of the year was only \$64,780.39. The large run-off in 1927 resulted in the development of 126,603,350 k.w.h. of electric energy returning an income to the District, as billed, \$569,-

715. The Power Company disputed the billing whereupon the District brought suit; and, on September 14, 1928, judgment was entered in favor of the District that the power company should pay for all electric energy generated and delivered at the powerhouse. This validation of their contract provides the District with a market for power at a favorable and definite price.

The following table shows the actual power income received by the District for the calendar years mentioned: [578]

Year	Income	Additional Payment	Total
1927	\$ 495,397.90)	123,799.75	
1928	444,486.83)		
1929	264,333.61		
1930	308,931.00		
1931	95,917.21		
1932	605,630.18		
	<hr/>	<hr/>	<hr/>
	\$2,214,696.73	\$123,799.75	\$2,338,496.48

Thus, the average annual power income for the years 1927 to 1932, both inclusive, is \$389,749.40; and, this average is considerably below the annual revenue as originally estimated.

Power sales for the current year are reported to be \$316,958.

(b) Water Sales

The Merced Irrigation District is a non-profit organization; but, all land taking water on a rotation basis for irrigation in excess of 4 acre feet per season must pay the following tolls:

1st ac. ft. in excess of 4 ac. ft.	\$0.75
2nd " " " " " " " "	1.00
3rd " " " " " " " "	1.25
4th " " " " " " " "	1.50
Each additional acre foot	1.75

The above tolls are applied to this excess use of water by crops requiring a water delivery on a rotation basis, such as, alfalfa, orchards, vineyards and general crops. [579]

Land taking water, not on a rotation, but on a constant or steady flow basis for irrigation, such as rice, must pay the following tolls:

1st ac. ft. in excess of 4 ac. ft.	\$1.00
2nd " " " " " " " "	1.50
3rd " " " " " " " "	2.00
4th " " " " " " " "	2.50
Each additional acre foot	3.00

The collection of these tolls has reduced the wasting of water and resulted in more efficient irrigation practice; but, the annual collection is only a small portion of the total District income. The revenue received by the District from these tolls has been as follows:

1930	\$ 7,621.53
1931	2,203.80
1932	14,363.58
1933	10,000.00

In 1930, about \$5,000 of the amount collected was from acreage planted to rice; but, in 1931, a com-

bination of low price and water shortage decreased the rice crop.

VIII. Other District Income

(c) Income from District Owned Lands (Not included in Crop Report)

The status of and income from lands taken over by the Merced Irrigation District segregated by years is shown in the following table. [580]

Year	Acres	Assessed Value	Delinquent Taxes	Rentals
1928	210	\$ 23,100	\$ 7,837.64	\$ 187.00
1929	681	52,025	20,170.34	1,155.96
1930	20	1,400	575.30	.....
1931	4,019	387,395	126,726.32	2,611.24
1932	5,019	509,105	133,707.93	7,495.00
1933	10,492	1,011,355	304,104.63	14,000.00

Many of the parcels taken over by the District have not returned any revenue during the last few years, the tendency being for the poorer and relatively over-assessed lands to remain unredeemed and pass to the district. The average return per acre on these lands was about 65¢ in 1931, \$1.50 in 1932 and \$1.33 in 1933.

(d) Other Income

In 1932, according to the District statement, income for other sources not hereinabove mentioned was separately shown thus:

Interest on Redemptions.....	\$10,511.21
Water Diversion concession	500.00
Interest on Bank Balances	3,794.31
Settlement with F & M Bank.....	12,000.00
Equipment rentals, etc.	1,226.28
	<hr/>
	\$28,031.80

The estimate of "other income" for 1933 is \$44,-023. This estimate includes cash left from last year or an available balance, January 1, 1933, of \$35,443 together with estimated collections for the year 1933 of \$8,580.

In summary, "other district income" for 1933 is: [581]

Power Sales	\$316,958
Water Sales	10,000
Dist. Owned Lands	14,000
Other Income	44,023
	<hr/>
Total	\$384,981

Deducting this \$384,981 item of income from the above deficit of \$1,152,743 leaves a deficit of \$767,-762 before bond service requirements are considered.

IX. District Bond and Warrant Service Requirements

(a) Bonded Debt

The largest total bond issue outstanding of any irrigation district in California has been sold by

the Merced Irrigation District. There are three issues, the first being divided into four divisions of which the first and fourth division bear 6% interest and the second and third divisions bear 5½% interest. A summary of details concerning these issues is shown as follows:

Issue	Dated	Amount	Rate	Due Serially
1st-1st Div.	1/1/22	\$3,060,000	6%	1934-50 Jan. 1, ea. yr.
1st-2nd Div.	1/1/22	1,800,000	5½%	1951-53 do
1st-3rd Div.	1/1/22	1,320,000	5½%	1954-55 do
1st-4th Div.	1/1/22	5,760,000	6%	1956-62 do
2nd Issue	5/1/26	3,250,000	6%	1937-46 and 1963-64 do
3rd Issue	5/1/26	1,000,000	5½%	1965-66 do

Total Outstanding

September 1933\$16,190,000

In 1933 the 1st division of the 1st bond issue started to mature in the sum of \$60,000 of which \$37,000 remains due and unpaid. The principal of these issues, matures with progressively increasing annual amounts. The bond service (annual [582] requirements for interest and maturities) increases to a maximum requirement of \$1,265,200 for 1951 and then declines to \$1,135,000 in 1964. In the following year it abruptly drops to \$527,500 which is succeeded by the final maturity payment of one-half million in 1966.

The total bond service requirements as reported by the District Auditor including amounts in default, are:

		<u>Principal</u>	<u>Interest</u>	<u>Total</u>
January, 1933		\$ 37,000.00	\$ 167,940.00	
July 1933			475,400.00	
		<hr/>	<hr/>	<hr/>
		\$ 37,000.00	\$ 643,340.00	\$ 680,340.00
1934		63,000.00	948,500.00	1,011,500.00
		<hr/>	<hr/>	<hr/>
		\$100,000.00	1,591,840.00	\$1,691,840.00

X. Comparison of Net District Income with Bond and Warrant Requirements

A direct comparison of the net District income with bond service requirements may be briefly stated:

Net District Income (Deficit).....	\$ 767,762
Bond Service	1,691,840

XI. Establishment of District Charges

(a) Water Tolls

As the largest annual income derived from tolls in 1932 was only about 1% of the total District income, any slight advance in toll charges would not materially increase [583] the total revenue. It would merely have the effect of further discouraging the users of excess water and add to the production costs of a few crops already in a competitive field. Any change in the water tolls as now established is not contemplated.

(b) District Valuations (Grouped as to per acre values)

The Merced Irrigation District Assessor's table of valuations for 1931-32 was as follows:

Assessed Value per Acre	Acres	Percent
\$150 to \$175	59,300	34.4
100 to 149	36,100	21.0
75 to 99	20,200	11.7
40 to 74	23,500	13.7
20 to 39	18,100	10.5
5 to 19	14,900	8.7
	174,000	100.0

A comparison of the above table with the "scaled-down" or revalued assessment for 1932-33 emphasizes the increase in the lower brackets.

1932-33 Assessment Table:

Assessed Value per Acre	Acres	Percent
\$100 to \$120	57,000	33.1
75 to 99	32,000	18.6
50 to 74	17,000	9.9
30 to 49	25,000	14.5
15 to 29	22,000	12.8
5 to 14	19,000	11.1
	172,000	100.0

Valuations used in the equalized assessment roll for 1933-34 are the same as for 1932-33. [584]

(c) Assessment Rates and Delinquencies

The total annual assessment levied upon the lands in the Merced Irrigation District for District purposes has ranged from a low of \$10,148,490 in 1920-21 to a high of \$22,260,300 in 1924-25. Since then the valuation has generally decreased each year accompanied by an increase in the tax rate. In 1924-25 the assessed valuation was increased more than

63% over the previous years, because in the negotiations for the sale of district bonds in the amount of \$9,010,000, it was pointed out that the total assessed valuation was less than the total amount of bonds to be issued. Therefore, on September 13, 1924, in accordance with their agreement with the syndicate of bond buyers, the Merced Irrigation District board of directors sitting as a Board of Equalization, increased the assessed value of each parcel by an amount equal to one-half its assessed value, with few parcels being decreased for cause.

It is noted that up to and including June 30, 1930, the District had levied assessments totaling \$8,670,344.56 of which only about 3% had not been paid. And, on June 26, 1933, only \$35,548.13 or 0.4% of the total assessments levied during the first nine years of the District's existence remained unpaid. Notwithstanding a more than \$1,000,000 reduction in assessed valuation and a decrease in the tax rate for the tax year 1931-32, the delinquency on the last Monday in June 1932 [585] was more than double that of the previous year.

The 1932 assessment roll, after revaluation of the District by the Assessor, was \$12,872,880 or a decrease of 32.8% from the previous year; and, in view of the outstanding bond interest obligation and other fixed charges, it was necessary to fix a legal rate of \$8.90 or a 58.93% increase over the previous year's rate. The combination of a rela-

tively large increase in tax rate, together with depression prices, undeveloped land, increasing delinquencies and other overlapping liens and taxes, resulted in a delinquency of \$713,887.24 as of August 28, 1933, or 62.15% of the tax roll.

On account of the increase in the area and number of delinquent parcels sold to the District to which the District has taken title, a scale-down of the assessed valuations in Merced City and reductions made by the Board of Equalization the tax roll for 1933-34 is \$12,292,410.

This total valuation represents a decrease of \$581,470 or a 4.5% reduction from last year. And, this reduction may be segregated as follows:

	Merced City	Bal. of Dist.
1932-33	\$1,740,400.00	\$11,133,480.00
1933-34	1,559,055.00	10,733,355.00
Decrease	\$ 181,345.00 (10%)	\$ 400,125 (3.6%)

For the years 1926 to 1931, inclusive, with a generally uniform total assessed valuation, the average tax [586] rate was about \$6.00 on the \$100. As the Merced Irrigation District is a comparatively young district, a complete record of valuations, rates and delinquencies is set forth in the preceding statement of Delinquent Tax Rolls of Merced Irrigation District.

DELINQUENCIES 1920-1933

(Exclusive of Penalties and Costs)

Year	No. of Assm'ts.	Valuation	Rate	Tax Levy	Delinquent Last Monday in June	Percent Delinquent
1920-21	3882	\$10,148,490	\$1.40	\$ 142,078.81	\$ 13,831.23	9.74
1922-23	5524	13,734,440	2.73	374,950.07	61,601.86	16.43
1923-24	5647	14,209,420	4.75	674,933.53	83,556.15	12.38
1924-25	5846	22,260,300	4.20	934,932.60	79,706.93	8.52
1925-26	6200	21,473,230	7.10	1,524,589.59	126,240.37	8.27
1926-27	6385	20,995,430	6.30	1,321,528.56	141,240.53	10.68
1927-28	6353	20,636,465	6.00	1,238,187.90	131,139.78	10.59
1928-29	6845	20,686,900	6.00	1,242,393.00	118,249.90	9.51
1929-30	7027	20,279,175	6.00	1,216,750.50	117,095.64	9.62
1930-31	7260	20,246,775	5.90	1,194,585.35	210,596.89	17.63
1931-32	7462	19,159,570	5.60	1,071,567.84	401,361.59	37.40
1932-33	7594	12,873,880	8.90	1,148,483.04	721,188.56	62.80
				\$12,084,980.79		

TAX SALES

Year	Original Number Tax Sales	Amount Delinquent 6/26/33	Sales	Percent Delinquent 6/26/33
			No. of Unredeemed 6/26/33	
1920-21	570	1.82	1	.0012
1922-23	712	16.70	4	.0044
1923-24	646	30.38	2	.0045
1924-25	540	64.82	4	.0069
1925-26	620	512.87	7	.033
1926-27	707	569.42	9	.043
1927-28	653	509.50	10	.041
1928-29	737	3,804.97	57	.3
1929-30	752	30,038.55	207	2.46
1930-31	1499	133,933.70	1942	11.21
1931-32	2675	355,269.37	2258	33.15
1932-33				

Addenda: 1932-33 Tax Sale Aug. 28, 1933.

Number of Sales 4407—Amt. Delinquent \$713,887.24, 62.15%.

Note: The foregoing statistics do not separately consider property deeded to Merced Irrigation District.

It will be noted that the last item on the preceding statement indicates a 62.15% delinquency as of June 26th, 1933; and, a later statement of the assessor received September 15, 1933 shows that there are 119,300 acres delinquent, valued at \$8,834,730. In accordance with the provision of Section 14-c of the California Irrigation District Act, the board of directors, by formal resolution, provided for the payment of the assessment in two installments. The first installment which amounts to 60% of the total levy becomes delinquent on the last Monday in December; and, the second installment (40%) becomes delinquent on the last Monday of June next thereafter. Figures in the above statement show the delinquency for the full year; and, the percent delinquent is the amount unpaid in the two installments divided by the total levy. A redemption of the property sold for non-payment of assessments may be made within three years from the date of purchase, the last three columns in the above statement are subject to reductions. Redemptions in four equal annual installments provided for in Chapter 835, Statutes 1933 may reduce immediate returns to the District from this source; but, in the long run, a greater proportion of the [588] delinquent lands might be returned to the tax roll. However, the percentage delinquent shown for the last three years (in the last column of the statement) will be reduced by redemptions prior to the expiration of the three year redemption period. Going back further than three years, the percent-

age so shown represents the proportion either deeded to the District or subject to deed.

(d) Assessment rate based upon ability of Lands to pay from Data above.

Since the Cone Reports show that the gross value of all crops produced in the Merced Irrigation District is less than the cost of production thereof, even though essential items of cost were expressly omitted; and, since other costs and taxes increase this deficit to more than three-quarters of a million dollars in contrast with bond service requirements of over \$1,600,000, it is obvious that the District can pay only a nominal rate if based upon its ability to pay.

XII. Comment

It has been reported by the District Auditor that the "legal rate" for 1933-34 would be \$15.60 which is ascertained as follows:

1933-34 Tax Roll	\$12,292,410
15% of " "	1,843,860
	<hr/>
	\$10,448,550

Then, the sum to be raised (\$1,629,040) divided by the aggregate [589] assessed value less fifteen percent (\$10,448,550) gives a rate of \$0.1559 or \$15.60 per \$100 of assessed value.

On September 26, 1933, the Board of Directors fixed the rate at \$1.00 per hundred. By deducting fifteen percent for anticipated delinquencies, the \$1.00 rate will yield \$104,485 if both installments

are fully paid. This money will be used for general expenses. Since the district's budget provides for expenditures of \$510,000 for all purposes; and, the income from power sales is expected to return between \$450,000 and \$500,000 only a relatively small amount of money will be available for bond service. However, in view of the fact that the refinancing plan, already accepted and approved in principle by the district and by the bondholders' committee, also fixes the rate at \$1, it appears that the rate should be approved. [590]

I, Harmon S. Bonte, Executive Secretary of the California Districts Securities Commission, do hereby certify that the foregoing is a full, true and correct copy of report of Commission investigation of the affairs of Merced Irrigation District, entitled, "Report Upon an Investigation of the Affairs of Merced Irrigation District, Merced County, California * as Required Under the Terms of Section 11 of the California Districts Securities Commission Act * October 1933," upon which issuance of Commission Order No. 50, dated October 20, 1933, to the Board of Directors of said district was predicated.

Executive Secretary, California Districts Securities Commission.

Dated:

San Francisco, California,

November, 1938. [591]

PETITIONER'S EXHIBIT NO. 29A

ORDER NO. 50

This exhibit was Order Number 50 of the California District Securities Commission headed approval of assessment rate, report, dated October 20, 1933, and reading as follows:

Whereas, the Board of Directors of Merced Irrigation District has heretofore levied the annual assessment required by the California Irrigation District Act and acts amendatory thereof and supplementary thereto and the money derived from said assessment allocated to the payment of bond interest and principal has been insufficient to meet said bond interest and principal when due and therefore said Merced Irrigation District is more than twenty (20) per cent in default in the payment of the amount due on its bond interest or principal or both; and

Whereas, said Board of Directors by its resolution dated August 22, 1933, gave written notice to the California Districts Securities Commission of its intention to levy an annual assessment for such total amount as in its judgment by a finding of fact, in accordance with the provisions of Section 11 of the California Districts Securities Commission Act, will be reasonably possible for the lands of the district, taken as a whole, to pay without exceeding a delinquency of fifteen (15) per cent; and

Whereas, the Board of Directors of said Merced Irrigation District has by resolution dated Sep-

tember 26, 1933, petitioned said California Districts Securities Commission for its approval of a total levy of \$122,924.10 requiring an assessment rate of \$1.00 per \$100 of assessed valuation on the lands of the district for the assessment year 1933-34 as determined by said Board of Directors; and

Whereas, the California Districts Securities Commission has caused an investigation to be made into the financial affairs of said district and its lands to enable said Commission to carry out the provisions of said Section 11 and being fully informed upon the affairs of said Merced Irrigation District;

Now, therefore, we, the undersigned members of the California Districts Securities Commission, make the following report to the Board of Directors of Merced Irrigation District:

(1) That in our opinion the total levy of One Hundred Twenty-Two Thousand Nine Hundred Twenty-Four and 10/100 Dollars (\$122,924.10) on the lands of the district for the assessment year 1933-34 is the amount that said lands can reasonably be expected to pay without exceeding a delinquency of fifteen (15) per cent.

(2) That the assessment rate of \$1.00 per \$100 of assessed valuation calculated to produce said total levy of \$122,924.10 is hereby approved.

CALIFORNIA DISTRICTS
SECURITIES COMMISSION [592]

PETITIONER'S EXHIBIT NO. 30

This was a report upon an investigation of the affairs of the district made by the California Districts Securities Commission for the year 1934 and in the same form as described in Exhibit No. 29 and 32. [593]

PETITIONER'S EXHIBIT NO. 30A

ORDER NO. 53

This exhibit was an approval of the assessment rate by the District Securities Commission for the assessment year 1934-35, and was in like form as Exhibit 29A. [594]

PETITIONER'S EXHIBIT NO. 31

This was a report upon an investigation of the affairs of the district made by the California Districts Securities Commission for the year 1935 and in the same form as described in Exhibits No. 29 and 32. [595]

PETITIONER'S EXHIBIT NO. 31A

ORDER NO. 60

This exhibit was an approval of the assessment rate by the District Securities Commission for the assessment year 1935-36 and was in like form as Exhibit 29A. [596]

PETITIONER'S EXHIBIT NO. 32

This was a report by the California Districts Securities Commission upon an investigation of the affairs of the Merced Irrigation District pursuant to Section 11 of the California Districts Securities Commission Act, dated Nov. 10, 1936, reading as follows: [597]

REPORT UPON MERCED IRRIGATION
DISTRICT

October 1936

I. Physical Properties

District boundaries and other physical properties have remained unchanged during the past year. Lands may be classified at present as follows:

(a) Cities, towns, roads, rts-of-way	18,072	Ac.
(b) Irrigated lands	110,000	“
(c) Dry farmed lands	43,092	“
(d) Uncultivated irrigable lands.....	18,518	“

Total	189,682	Ac.
-------------	---------	-----

[598]

There was ample water during the past winter to fill the district storage reservoir and meet all irrigation requirements. Revenue from the sale of power will probably be about the same this year as in 1935.

It has not been necessary to increase the number of drainage wells during the past year but it is anticipated that during 1937 some new wells have to be drilled and equipped because of rising ground water level in lands not heretofore affected.

II. Production

The following record of crops grown in the District for the present season has been compiled by district ditchtenders from records of water deliveries made for various crops. Yields are averages of estimates furnished by individual farmers and corporations operating farms within the district. Prices were supplied by local dealers in farm products.

Heavy frosts in the spring are reported to have seriously affected some crops. The Thompson seedless grape crop is reported as about 40 percent normal, figs about 60 percent normal and peaches about 75 percent normal. Yields of other crops are normal for average harvesting conditions. [599]

Crop	Acres	Yield per Acre	Total Yield	Unit Price	Value to Grower
Alfalfa	10,807	2- $\frac{3}{4}$ T	29719 T	\$10.50	\$ 312,106
Almonds	2,943	200 #	588600 #	0.16	94,176
Apricots	782	350 #	273700 #	0.10	27,370
Beans	3,997	450 #	1,798650 #	0.05	89,932
Clover	657	—	—	20.00 Ac.	13,140
Corn	4,996	1500 #	7,494000 #	0.015	112,410
Cotton	6,735	350 #	2,357250 #	0.12	282,870
Figs—Drying	5,550	720 #	3,996000 #	0.05	199,800
“ —Kadota.....	2,400	3- $\frac{1}{2}$ T	8400 T	0.025 #	420,000
Garden Truck.....	625	—	—	150. Ac.	93,750
Irrigated Grain.....	17,650	1500 #	26,475000 #	0.011	291,225
Non-Irrig. “	9,000	900 #	8,100000 #	0.009	72,900
Grapes—Wine	5,012	3- $\frac{1}{2}$ T	—	13.00	228,046
Grapes—Drying.....	3,024	$\frac{3}{4}$ T	2268 T	70.00	15,876
Grapes—Ship'ng	3,486	3 T	10450 T	18.00	188,244
Melons—Water	535	4 T	2140 T	12.00	25,680
Melons—Honey'dw	150	3 T	450 T	16.00	7,200
Melons—Cantl'ps	109	175 Cr.	19075 Cr.	.90	17,168
Irrig. Pasture.....	13,607	—	—	1.75 Ac.	23,812
Non-Irrig. “	19,881	—	—	1.00 Ac.	19,881
Peaches—Cling.	2,900	3- $\frac{1}{2}$ T	10150 T	30.00	304,500
Peaches—Drying	2,341	1000 #	2,341000 #	0.075	175,575
Peaches—Ship'ng	495	4- $\frac{1}{2}$ T	2228 #	22.50 T.	50,130
Plums	226	1- $\frac{1}{2}$ T	339 T	25.00	8,475
Rice	4,862	25 Sx.	121550 Sx.	1.75	212,713
Sudan Grass.....	1,106	—	—	15.00 Ac.	16,590
Sweet Potatoes.....	3,128	3750 #	11,730000 #	0.02	234,600
Tomatoes	1,500	7 T	10500 #	13.00 T.	136,500
Misc. Crops	1,834	—	—	85.00 Ac.	155,890
Young Trees	611	—	—	—	—
(Not Bearing).....	—	—	—	—	—
Totals	130,949	—	—	—	\$3,830,559

III. Cost of Production

Following tabulation shows the estimated cost of production for each crop grown. These costs are based [600] upon studies which have been carried on by the University of California for a number of

years. They are intended to show cost of labor, supplies and cash outlay, without including taxes, district assessments or depreciation of trees, vines or buildings:

Crop	Acres	Production Cost Per Acre	Total Production Cost
Alfalfa	10,807	\$20.06	\$ 217,005
Almonds	2,943	42.35	124,636
Apricots	782	45.97	35,949
Beans	3,997	19.48	77,861
Clover	657	4.40	2,891
Corn	4,996	20.35	101,668
Cotton	6,735	37.94	255,526
Figs—Drying	5,550	56.84	315,462
“ —Kadota	2,400	81.18	194,832
Garden Truck	625	86.35	53,968
Irrigated Grain	17,650	8.72	153,908
Non-Irrig. Grain	9,000	7.07	63,630
Grapes—Wine	5,012	41.50	207,998
Grapes—Drying	3,024	56.20	169,949
“ —Shipping	3,486	27.00	94,122
Melons—Water	535	24.75	13,241
“ —Honeydew	150	24.12	3,618
“ —Cantalopes	109	71.19	7,760
Irrig. Pasture	13,607	.82	11,158
Non-Irrig. “	19,881	.11	2,187
Peaches—Cling	2,900	62.48	181,192
“ —Drying	2,341	78.98	184,892
“ —Ship'ng	495	71.50	35,392
Plums	226	75.75	17,120
Rice	4,862	24.75	120,335
Sudan Grass	1,106	7.59	8,395
Sweet Potatoes	3,128	51.56	161,280
Tomatoes	1,500	60.50	90,750
Misc. Crops	1,834	66.00	121,044
Young Trees (Not Bearing)	611	--	--
Totals	130,949		\$3,027,769

[601]

Deducting the total estimated cost of all production from the estimated gross value of all crops grown gives a net value, before taxes and district assessments are considered, of \$802,790.

IV. District Costs

(a) Maintenance and Operation

Costs of maintaining district's irrigation works, power house and drainage equipment for the past year, with estimates for 1936 and 1937, are as follows:

	Actual 1935	Estimated	
		1936	1937
Irrigation System	\$183,906.23	\$230,000	\$225,000
Drainage	88,752.45	85,000	100,000
Power House	22,185.05	26,400	22,790
Garage & Shop.....	—	15,000	15,000
Totals.....	\$294,843.73	\$356,400	\$362,790

(b) Administration and General Expense

Office expense, officers' salaries, directors' fees and other overhead expense for the past year, with estimates for 1936 and 1937, follow: [602]

	Actual 1935	Estimate	
		1936	1937
Administration & Overhead.....	\$41,767.58	\$67,000	\$63,700
Insurance charges, etc.....	12,072.63	11,000	11,000
Totals.....	\$53,840.21	\$76,600	\$74,700

(c) Contractual Obligations

As has been explained in previous reports, district has assumed the obligations of three small

drainage districts which are within its boundaries, and payment of Crocker-Huffman contracts. The principal amount of bonds outstanding against the area within the drainage districts is being rapidly reduced and will be completely paid off within a few years. Total contractual obligations for 1936 are estimated at \$121,000, and those of 1937 at \$70,000.

(d) Summary of District Charges

All of the foregoing district charges may be summarized as follows:

	1935	1936	1937
Operation & Maintenance.....	\$294,843.73	\$356,400	\$362,790
Administration & General Expense	53,840.21	78,600	74,700
Contractual Obligations	52,811.83	121,000	70,000
Totals.....	\$401,495.77	\$556,000	\$507,490

[603]

V. Taxes and Assessments

(a) County Taxes

The total county valuation of all district lands for 1936-37 is \$21,829,003, of which \$8,887,583 represents valuation of lands within cities and towns and the remainder, \$12,941,420, valuation of rural lands. The county tax rate for 1936-37 on the former is \$1.35 per \$100 assessed valuation and \$1.45 per \$100 assessed valuation on the latter, making total levies of \$119,983 and \$187,651, respectively. The cities of Atwater, Livingston and Merced are

within the boundaries of the irrigation district and are a part thereof. Each city levies city taxes, which for 1936-37, are shown below:

	<u>Acres</u>	<u>County Valuations</u>	<u>Rate</u>	<u>Total Levy</u>
Atwater	852	\$1,224,630.00	\$1.05	\$12,859
Livingston	624	839,420.00	1.10	9,234
Merced	1775	6,921,190.00	.90	62,291
Total.....				\$84,384

The total of the city and county taxes for 1936-37 is \$392,018.

County has bonds in the principal amount of [604] \$822,000 outstanding, of which approximately \$106,800 may be considered as a lien upon district lands.

(b) School District Taxes

Following is a tabulation of acreages in various school districts, county valuations and school district taxes for the year 1936-37:

<u>School District</u>	<u>Acres</u>	<u>County Valuation</u>	<u>Tax Rate</u>	<u>Total Levy</u>
High Schools				
Merced Union	157,170	\$19,980,450	\$.25	\$ 49,951
Hilmar	4,480	112,350	.55	618
Le Grand	18,940	1,695,400	.35	5,934
Elementary Schools				
Applegate	6,500	287,400	.30	862
Arundel	4,820	473,500	.28	1,326
Buhach	2,240	264,200	.10	264
Cressey	4,380	427,250	.30	1,282
Eschscholtzia	3,360	728,230	.03	218
Farmdale	4,780	335,375	.04	134
Franklin	5,960	689,420	.25	1,724
Fruitland	3,280	402,850	.25	1,007

Jordan	8,000	482,300	.20	965
Livingston ^o	624	469,175	.45	2,111
“ ^{oo}	14,846	1,349,450	.15	2,024
Merquin	4,480	110,250	.38	419
Merced Union ^o	1,775	5,730,400	.45	25,787
“ ^{oo}	10,865	1,440,200	.05	720
McSwain	8,870	375,480	.15	563
Mitchell ^o	852	522,400	.30	1,567
“ ^{oo}	5,708	571,780	.15	858
Planada	8,900	79,840	.15	120
Pioneer	7,730	638,490	.15	958
Savanna	4,120	408,630	.40	1,635
Winton	4,080	498,320	.30	1,495
Whitmer	5,600	394,680	.20	789

Total School District Taxes.....\$103,331

^oInside City

^{oo}Outside City

[605]

Several of the school districts have bonds outstanding. The total amount of these bonds and the portion thereof that may be considered a lien upon the lands of the irrigation district, are as follows:

School District	Total Bonds Outstanding	Proportionate Amt. of Lien on District Lands
Hilmar High	\$ 2,500	\$ 250
Merced Union High	87,500	78,700
Applegate Elementary	800	800
Arundel	500	500
Cressey	2,000	2,000
Farmdale	400	400
Livingston ^o	10,000	10,000
McSwain	2,500	2,500
Mitchell ^o	5,000	5,000
Pioneer	2,000	2,000
Savanna	2,000	2,000
Winton	3,000	3,000
Whitmer	400	400

^oInside City

Total \$107,600

Assessment for principal and interest on these bonds is included in the school district tax.

(c) Special District Taxes

The irrigation district is overlapped by a number of special districts for which taxes are levied by county officials. These special districts, overlapping areas, assessed valuations, tax rates and total levies [606] for 1936-37, follow:

Road Districts	Acres	County Valuation	Tax Rate	Total Levy
No. 1	45,080	\$2,550,800	\$1.00	\$25,508
No. 2	22,240	892,200	1.00	8,922
No. 5	5,600	225,200	2.00	4,504
No. 10	800	41,325	.80	331
No. 14	44	28,450	47.00	13,372
Lighting Districts				
Le Grand	360	173,850	.35	608
Planada	800	169,420	.30	508
Winton	1,120	189,850	.15	285
Cemetery Districts				
Merced	86,160	11,852,400	.10	11,852
Merquin	4,480	110,250	.02	22
Plainsburg	14,800	756,830	.05	378
Winton	62,200	6,051,350	.05	3,026
Mosquito Abatement				
Merced	10,880	7,232,350	.05	3,616
Total Special District Taxes				\$72,932

Several of these special districts also have bonds outstanding. The total principal amount of these issues and the prorata amount which may be considered a lien upon the lands of the irrigation district, follow: [607]

<u>Road District</u>	<u>Total Outstanding</u>	<u>Proportionate Amount of Lien on District Lands</u>
No. 1	\$165,753	\$124,315
No. 2	46,229	37,445
No. 5	4,433	2,438
No. 10	134,714	2,020
No. 14	89,835	89,835
Total.....		\$256,053

(d) Summary of Taxes

A summary of the taxes levied for 1936-37 by city and county officials, is given below:

County Taxes	\$307,634
City “	84,384
Sch. Dist. “	103,331
Spcl. Dist. “	72,932
Total	\$568,281

If city taxes are omitted from the above total, the taxes levied by county officials amount to only \$483,897. This figure may be used in arriving at a net value for crops grown in the district.

VI. District Bond and Warrant Service Requirements

(a) Bonds

District has bonds in the principal amount [608] of \$4,120,000 bearing interest at the rate of 5.5 per cent per annum, and in the principal amount of \$12,070,000 bearing interest at the rate of 6 per cent per annum, outstanding. These bonds have been in default for several years and as of September

29, 1936, the default in accordance with the schedule for these issues, is reported as follows:

Bonds due and unpaid.....	\$ 202,000
Bond coupons due and unpaid.....	2,857,545
Int. on reg. bonds and coupons.....	305,875
<hr/>	
Total	\$3,365,420

Under the existing bond schedule the amounts of bond interest and principal becoming due during 1937 are as follows:

Bond Interest due Jan 1 1937.....	\$ 469,370
“ “ “ Jul 1 1937.....	466,820
“ Maturities “ Jan 1 1937.....	85,000
<hr/>	
	\$1,021,190
Adding existing default	3,365,420
<hr/>	
Total	\$4,386,610

To provide sufficient revenue to meet the above requirements, if levied in accordance with the provisions [609] of Section 39 of the Irrigation Act, assessment rate of \$45.19 per \$100 assessed valuation, based on the valuations for 1936-37 and allowing for a delinquency of 15 percent, would be required.

At the present time, R.F.C. is holding district bonds of the above issues in the principal amount of \$14,624,000, which were purchased from former owners at the rate of 51.5 cents on the dollar, leav-

ing bonds in the principal amount of \$1,566,000 held by other owners. District has filed a petition in bankruptcy, which will probably be nullified because of the decision of the United States Supreme Court declaring the Municipal Bankruptcy Act unconstitutional. It is not known what the final disposition of the original bonds still outstanding will be. Under the loan contract with R. F. C. the district must provide for payment of interest at the rate of 4 percent per annum on the amount of the loan so far disbursed and provide payment to the bond interest reserve fund of \$92,200 each year. The interest requirement on the R. F. C. loan is approximately \$301,500. Adding the reserve fund payment, loan requirements total \$393,700, which under the loan agreement, must be [610] provided during 1937.

Assuming that the undeposited bonds may be refunded on the R. F. C. loan basis, the total bond service requirement including reserve fund payments for 1937, would be \$416,200.

The loan agreement further provides that power revenues exceeding \$100,000, up to a total of \$500,000, must be set aside for the service of refunding bonds. In years of normal precipitation the power revenue allocated to R. F. C. refunding bonds would total \$400,000, as the total income from power sources during these years usually exceeds \$500,000. Assuming that \$400,000 is available for loan requirements in 1937, no assessment need be levied for service of the loan.

During 1935, the district paid interest at the rate of 4 percent per annum on the liquidating value of bonds deposited under the R. F. C. loan refunding plan for the period during which the bonds were on deposit. A total of \$239,838.98 was expended for this purpose.

Bond interest and maturities of Fruitland Drainage District and Drainage Districts Nos. 1 and 2 are paid by Merced Irrigation District. The total [611] principal amount of bonds of these districts now outstanding is \$29,250. The payments on these bonds have been included as a contractual obligation under district costs in the foregoing text.

(b) Warrants

District has no interest bearing warrants outstanding.

VII. District Valuations and Assessments

No water tolls are collected by the district, the total cost of water to the landowner being represented by the amount of assessment paid by him. The district valuations, assessment rates and other assessment data for the past two and ensuing years are shown in the following tabulation:

	1934-35	1935-36	1936-37
Acres owned by District	12,569	20,514	25,475
Total Acres assessed.....	164,556	156,611	151,650
Total Assessed Val'n.....	\$12,158,405	\$12,078,870	\$11,420,790
Assesment Rate	\$ 1.70	\$ 3.00	\$ 3.00
Total Assmt. Levied.....	\$ 206,690	\$362,409.85	\$342,623.70
Present Delinquency	7.25%	9.68%	—

Most irrigable lands in the district have a valuation of from \$21 to \$120 per acre, which, under [612] an assessment rate of \$3.00 per \$100 assessed valuation, pay an annual charge of \$0.63 to \$3.60 per acre. The average assessment would be approximately 2.15 per acre. Assessment rates for several years past, the percent delinquent on the last Monday in June of the year in which the assessment was made and the delinquencies as of July 1, 1936, are shown below:

Year	Valuation	Rate	Unpaid on Delinquent Date	Delinquent As of 7-1-36
1928-29	\$20,686,900	\$6.00	9.51%	.031%
1929-30	20,279,175	6.00	9.62%	.75 %
1930-31	20,246,775	5.90	17.63%	4.07 %
1931-32	19,159,570	5.60	37.40%	13.32 %
1932-33	12,873,880	8.90	62.80%	24.39 %
1933-34	12,292,410	1.00°	31.70%	16.03 %
1934-35	12,158,405	1.70°	18.03%	7.25 %
1935-36	12,078,870	3.00°	9.68%	9.68 %

°Levied under the provisions of Section 11 of the California Districts Securities Commission Act.

The total amount of the delinquencies listed above remaining unpaid as of July 1, 1936, was \$515,980.31. A portion of this amount is being paid on deferred payment plans, as shown below:

	Total to be Paid	Paid to Date	Amount Unpaid
#1 Ten Year Plan.....	\$290,753.74	\$58,150.75	\$232,602.99
#2 " " "	17,187.32	1,718.73	15,468.59
Four " "	35,943.58	26,957.70	8,985.88
	\$343,884.64	\$86,827.18	\$257,057.46

VIII. District Income

(a) Power Sales

When the seasonal precipitation is sufficient to fill the reservoir behind the district's Exchequer Dam to capacity, the income from power sales for the following year usually exceeds \$500,000. The average for all the years since the completion of the dam to and including 1935, however, is \$380,-675. As stated above, the first \$100,000 from annual power sales and all above \$500,000 in income from the same source go into the general fund of the district and the remainder is allocated to bond service. The power income for 1937 is estimated at \$500,000, of which \$100,000 will go to the general fund and \$400,000 to the bond fund.

(b) Water Tolls

Some water is sold outside the district when the supply is sufficient and a charge is made for water in excess of a maximum duty per acre determined by the board of directors. In 1935, water sales totaled \$12,541.41, and for 1937 are estimated at \$10,500. [614]

(c) Land Rentals

The district has acquired 25,475 acres of land by tax deed. Some of this land has been rented each year for several years past. In 1935, land rentals collected totaled \$24,541.47. The anticipated income from this source for 1937 is \$25,000.

(d) Redemptions

As shown above, portions of the delinquent assessments are being paid on a deferred payment basis. At present these partial payments total \$39,779.98 per year. In addition, some lands are redeemed by payment of all delinquent assessments at one time. In 1935, redemptions, including interest, penalties and costs, totaled \$181,529.21. The same items for 1937 are expected to total about \$77,260.

(e) Other Income

In 1935, miscellaneous income consisting of land sales, interest on bank deposits and equipment rentals totaled \$4,921.19. The estimate of this income for 1937 is \$3,500. [615]

(f) Summary of District Income

The total estimated district income for 1937 is tabulated' below:

Power Sales	\$500,000
Water Sales	10,500
Land Rentals	25,000
Redemptions	77,260
Other Income	3,500
<hr/>	
Total	\$616,260

IX. Comparison of District Crop Values with Requirements

In the foregoing text, the net value of crops produced in the district as a whole before taking taxes and district costs into account has been estimated

at \$802,790. From this amount, taxes and district costs may be considered as payable, as is shown in the following statement:

Net Value of Crops.....		\$802,790
County, School & Spec. Taxes.....	\$483,897	
District Costs (Est. 1937).....	507,490	\$991,387
<hr/>		
Less District income other than		
Assessments	616,260	375,127
<hr/>		
Net value before Bond Service Requirements.....		\$427,663
Bond Service Requirements (R. F. C. Refunding).....		416.200
<hr/>		
Excess of Crop Values over Requirements.....		\$ 11,463
		[616]

In the above statement the amount of the city taxes has been omitted as not being payable directly from crop values. The statement indicates that the district income, taken as a whole, is approximately equal to the total requirements, provided the refunding is completed. If interest and maturities of the unrefunded bonds are to be paid in accordance with their original schedules and the default upon them corrected, it is probable that the bond service requirements shown above would be increased by about \$375,000 and there is no indicated ability to make such additional payment.

X. Comment

The board of directors has determined that the assessment rate for 1936-37 should be \$3.00 per \$100 assessed valuation, which is equivalent to a total levy of \$342,623.70. This is the same rate

as was levied for 1935-36. If paid with a delinquency not exceeding 15% this rate provides, with revenue from other sources, funds sufficient to meet district requirements with all bonds refunded on the basis of the R. F. C. loan plan. In all the above estimates it has been assumed that power revenue [617] will total \$500,000, which is higher than the preceding 9 year average.

The bond interest reserve fund now has a balance of \$184,845, sufficient to care for the possibility of an unexpected decrease in district revenues. The rate of \$3.00 per \$100 assessed valuation will probably be the rate of assessment for several years as it appears it will produce just about the required revenue in normal years.

It is recommended that the levy be approved.

[Seal] [618]

I hereby certify that the foregoing is a full, true and correct copy of report of investigation of the affairs of Merced Irrigation District prepared for the Commission in October 1936 in accordance with the provisions of Section 11 of the California Districts Securities Commission Act.

[Seal] (Signed) W. H. GOLDSWORTHY,
Assistant Secretary, California Districts Securities
Commission.

Dated:

San Francisco, California,

December 4, 1937. [619]

PETITIONER'S EXHIBIT NO. 32A

ORDER NO. 62

This exhibit was an approval of the assessment rate by the District Securities Commission for the assessment year 1936-37 and was in like form as Exhibit No. 29A. [622]

PETITIONER'S EXHIBIT NO. 33

This was a report by the California Districts Securities Commission upon an investigation of the affairs of the Merced Irrigation District pursuant to Section 11 of the California Districts Securities Commission Act for the year 1937 and in the same form as described in Exhibit No. 32. [623]

PETITIONER'S EXHIBIT NO. 33A

ORDER NO. 63

This exhibit was an approval of the assessment rate by the District Securities Commission for the assessment year 1937-38 and was in like form as Exhibit No. 29A. [624]

PETITIONER'S EXHIBIT NO. 34

This exhibit was Page 24 from Price Index issued in October 1938 by the Bureau of Agricultural Economics, U. S. Department of Agriculture, reading as follows:

GENERAL TREND OF PRICES AND WAGES
[1910-14=100]

Year and month	Whole- sale prices of all com- modities (1)	Industrial wages (2)	Prices paid by farmers for com- modities used in (3)—				Farm Taxes (4)
			Living	Produc- tion	Living and produc- tion	Farm wages	
1920.....	225	222	222	174	201	239	209
1921.....	142	203	161	141	152	150	223
1922.....	141	197	156	139	149	146	224
1923.....	147	214	160	141	152	166	228
1924.....	143	218	159	143	152	166	228
1925.....	151	223	164	147	157	168	232
1926.....	146	229	162	146	155	171	232
1927.....	139	231	159	145	153	170	238
1928.....	141	232	160	148	155	169	239
1929.....	139	236	158	147	153	170	241
1930.....	126	126	148	140	145	152	238
1931.....	107	207	126	122	124	116	217
1932.....	95	178	108	107	107	86	188
1933.....	96	171	109	108	109	80	161
1934.....	109	182	122	125	123	90	153
1935.....	117	191	124	126	125	98	(5) 154
1936.....	118	199	122	126	124	107	.....
1936							
November.....	120	201	.....	.....	127	.....	.....
December.....	123	211	124	133	128	.....	.....
1937							
January.....	125	209	.....	.....	130	103	.....
February.....	126	211	.....	.....	132	.....	.....
March.....	128	218	127	139	132	.....	.....
April.....	128	219	.....	.....	134	112	.....
May.....	128	219	.....	.....	134	.....	.....
June.....	127	220	129	141	134	.....	.....
July.....	128	218	.....	.....	133	123	.....
August.....	128	220	.....	.....	132	.....	.....
September.....	128	215	129	132	130	.....	.....
October.....	125	214	.....	.....	(5) 128	126	.....

Year and month	Index numbers of farm prices (August 1909-July 1914=100)								Ratio of prices received to prices paid
	Grains	Cotton and cottonseed	Fruits	Truck crops	Meat animals	Dairy products	Chickens and eggs	All groups	
1920.....	232	248	191	.....	174	198	223	211	105
1921.....	112	101	157	.....	109	156	162	125	82
1922.....	106	156	174	.....	114	143	141	132	89
1923.....	113	216	137	.....	107	159	146	142	93
1924.....	129	212	125	150	110	149	149	143	94
1925.....	157	177	172	153	140	153	163	156	99
1926.....	131	122	138	143	147	152	159	145	94
1927.....	128	128	144	121	140	155	144	139	91
1928.....	130	152	176	159	151	158	153	149	96
1929.....	120	144	141	149	156	157	162	146	95
1930.....	100	102	162	140	133	137	129	126	87
1931.....	63	63	98	117	92	108	100	87	70
1932.....	44	47	82	102	63	83	82	65	61
1933.....	62	64	74	105	60	82	75	70	64
1934.....	93	99	100	104	68	95	89	90	73
1935.....	103	101	91	127	118	108	117	108	86
1936.....	108	100	100	113	121	119	115	114	92
1936									
December.....	134	105	93	99	122	127	133	126	98
1937									
January.....	143	107	105	115	128	128	110	131	101
February.....	146	108	127	143	126	126	101	127	96
March.....	145	116	133	131	129	125	102	128	97
April.....	154	117	142	127	130	120	104	130	97
May.....	149	112	152	139	133	116	96	128	96
June.....	139	107	157	124	137	113	95	124	93
July.....	139	106	145	96	144	116	102	125	94
August.....	119	90	123	104	151	119	109	123	93
September.....	111	74	121	117	144	123	119	118	91
October.....	93	67	99	130	136	128	127	112	(5)88
November.....	85	65	88	124	120	132	135	107	(5)84

(1) Bureau of Labor Statistics Index with 1926=100, divided by its 1910-14 average of 68.5.

(2) Average weekly earnings, New York State factories. June 1914 =100.

- (3) These indexes are based on retail prices paid by farmers for commodities used in living and production reported quarterly for March, June, September, and December. The indexes for other months are interpolations between the successive quarterly indexes.
- (4) Index of farm real estate taxes, per acre, 1913=100.
- (5) Preliminary.

[625]

PETITIONER'S EXHIBIT NO. 35
REPORT

This exhibit was a report of Dr. Benedict. A printed copy of this report is hereunto annexed. [Set forth in separate volume.] [626]

PETITIONER'S EXHIBIT NO. 36
TESTIMONY OF DR. BENEDICT.

This exhibit is the testimony of Dr. Benedict. This testimony is already set forth in narrative form in the condensed statement of testimony. [Set forth at page 432 of this printed record.] [627]

PETITIONER'S EXHIBIT NO. 36A
TESTIMONY OF MR. LESTER

This testimony is already set forth in narrative form in the condensed statement of testimony. [Set forth at page 494 of this printed record.] [628]

PETITIONER'S EXHIBIT NO. 37

was a letter addressed by the Bondholders' Committee to the bondholders, dated December 15, 1933, reading as follows: [629]

Merced Irrigation District

Bondholders' Protective Committee

Committee

Livingston B. Keplinger, Chairman

Thos. W. Banks, Vice-Chairman

Charles D. Bates

Milo W. Bekins

Reed J. Bekins

Archibald Borland

Hon. Geo. E. Crothers

Mark C. Elworthy

Victor Etienne, Jr.

Robert Fullerton, Jr.

Hon. James N. Gillett

M. Vilas Hubbard

Myford Irvine

Counsel

Orrick, Palmer & Dahlquist

Financial Center Building

San Francisco

Secretaries

W. L. Temple

485 California Street, San Francisco

Telephone Sutter 7995

B. P. Lester

621 South Spring Street, Los Angeles

Telephone Mutual 2351

To the Holders of Bonds of Merced Irrigation
District:

The undersigned Bondholders' Protective Committee is pleased to announce that a Refunding Plan has been formally adopted by the Board of Directors of the Merced Irrigation District, has received the approval of the California Districts Securities Commission, and has been approved by the voters of the District at an election held November 22, 1933. More than \$5,800,000 of the District's outstanding bonds (approximately 35% of the bonds to be refunded) are already on deposit with the Committee. Before the Plan may be consummated and the refunding bonds issued by the District, however, sufficient additional outstanding bonds must be deposited with the Committee to enable it to formally adopt the Plan in accordance with the terms of the Deposit Agreement of March 1, 1932, and, accordingly, if you have not already deposited your bonds, the Committee urges that you do so at once.

The primary object of the Refunding Plan is to re-establish the value of the bonds of the Merced Irrigation District by (1) preserving intact the principal amount of the District's bonded debt, (2) reducing the annual bond interest and sinking fund charges to a basis believed to be within the ability of the landowners to meet, (3) rehabilitating the general financial condition of the District and (4) encouraging future colonization and development of the District.

The paragraphs which follow present briefly:

1. The District's existing critical financial condition;
2. The basic causes underlying the District's inability to carry its existing bonded indebtedness;
3. The general terms of the Refunding Plan adopted by the District.

1. The District's Existing Critical Financial Condition.

Early in 1931, the critical financial condition of the Merced Irrigation District was first brought to the attention of the Committee. Farm prices had begun to recede from the levels of previous years, thereby curtailing the landowners' ability to meet their assessments, with the result that 17.6% of the 1930-1931 assessment was unpaid and the District defaulted on a portion of its bond interest due July 1, 1931. In the same year the State of California

experienced a severe drought, with the result that the District received from the sale of power only \$95,917 (as compared with a normal average annual expectancy of approximately \$450,000) and the District was forced to borrow funds with which to operate.

The following year, steadily decreasing farm prices were reflected in a 37.4% delinquency in the collection of the 1931-1932 assessment, with the result that the District was forced to default in the payment of its interest coupons due January 1 and July 1, 1932. However, in 1932 the District was fortunate in receiving \$602,510 from the sale of power, which tended to compensate for the heavy delinquency in the collection of assessments and made possible the payment of all but \$20,065 of the bond interest due January 1 and July 1, 1932 prior to the collection of the next year's assessment.

A delinquency of 62.8% was experienced in the collection of the 1932-1933 assessment. This excessive delinquency, coupled with a revenue of only \$316,924 from the sale of power during 1933, provided the ultimate phase of the District's financial collapse. At the present time approximately \$150,-[630] 000 of the coupons and \$36,000 of the bonds due January 1, 1933, and all of the \$475,400 of interest coupons due July 1, 1933 are in default. An additional \$475,400 of coupons and \$63,000 of bonds will fall due January 1, 1934, or a total impending interest and principal default of approximately \$1,200,000. Had the Refunding Plan not been

adopted, the District faced the legal requirement of setting a 1933-1934 assessment rate, according to District officials, of approximately \$15.60 per \$100 of assessed valuation (as compared with the 1932-1933 assessment rate of \$8.90 per \$100, payment of which was 62.8% delinquent). The foregoing figures have been taken from the District's records, which the Committee has relied upon and checked to the best of its ability. It cannot, of course, guarantee them but it believes them to be correct.

The District's shortage of money for bond interest and retirement has been accompanied by a correspondingly severe shortage of funds for District operation and maintenance. Since 1931, expenditures for operation and maintenance have necessarily been curtailed. The Committee has been advised by officials of the District that the irrigation system of the District is in need of extensive repairs, betterments and extensions. Essential expenditures for repairs, replacements and maintenance should now be made if the District is to function properly—such expenditures can be deferred no longer. Seepage and insufficient drainage are ruining large acreages of arable land; Johnson grass, Bermuda grass and other noxious weeds, through lack of control, are interfering with the flow of water in the canals and causing excessive seepage, and during irrigation noxious weed seeds are spread over the land irrigated; deferment of necessary repairs to the main canal tunnel seriously threatens

the District's water supply; and necessary repairs and replacements to the District's gates, canals, booster systems and drainage pumps must be made without further delay if the District is to function with reasonable efficiency. As a result of its own investigation the Committee is of the opinion that conditions in the District are in fact as represented by the District's officials.

2. Basic Causes Underlying the District's Inability to Carry its Existing Bonded Indebtedness.

The following, in the opinion of the Committee, are the basic causes which have contributed to the District's inability to carry its existing bonded indebtedness and clearly indicate that the relief provided by the Plan is necessary if the District is to continue in existence as a going concern with sufficient ability to meet its obligations.

(a) Large Areas of Land Incapable of Paying Costs of Water Under Present Conditions.

Partly through inaccuracies of the government soil survey of the Merced area which was used as a guide in fixing the boundaries of the District and through inaccurate information as to the capability of certain lands, and partly through desire to include as much land as possible in the District in order to spread the financial burden over as large an acreage as possible, extensive areas of land were included in the District which have not proved able in the light of actual experience to pay the costs of water under the Merced Irrigation District project.

Necessarily, prior to the construction of the physical works of the District, these earlier estimates were approximate only. In 1933, Mr. J. S. Cone, at the request of the District, completed a thorough classification and appraisal of the lands within the Merced Irrigation District based upon conditions of actual operation under the District's irrigation works. Mr. Cone's conclusions in general are verified by the Committee's representative Mr. R. L. Underhill, although Mr. Underhill placed a higher appraisal upon the lands in the District. According to Mr. Cone's appraisal, there are 171,610 acres of land in the District after excluding land within the boundaries of incorporated cities, railroad rights-of-way, roads, and irrigation district and county works and properties. Of such 171,610 acres, 90,758 acres were found by Mr. Cone to be good land and 80,852 acres taken as a whole were found to be capable of bearing but very little of their share of the District's bonded indebtedness under existing conditions. The future development of this land is problematical and the Committee is of the opinion that the possibility of substantial immediate income from these lands must be discounted.

The cost of distributing water to a large portion of such 80,852 acres, which are largely on the outside edges of the District, is far greater than the ability of the land to pay for the water delivered out of present earnings. Such land is characterized by heavy, tight and shallow soils, light blow sand, alkali to an injurious extent, rough topography

and poor drainage, and as subsequent events have proven, much of it probably should not have been included in the District, since the inclusion has thereby increased the cost of water service in so far as District operations are concerned without the full corresponding benefit of increased collections. Such land is adaptable chiefly to rice, pasture or grain, and the District has [631] found it necessary to restrict the amount of acreage which may be planted to rice because of the damage which the excessive irrigation required by rice inflicts upon adjoining areas of better land.

Of the 90,758 acres of better land in the District, approximately 17,000 acres are located above the level of gravity distribution of water. There are about 4,000 acres of this area served by private pumping plants installed prior to the formation of the District and which are entitled either to a refund of a portion of the full assessment levied or to low assessed valuation when irrigating from private pumping plants. Water must be boosted to the remaining 13,000 acres of such area, resulting in a heavy pumping charge to the District in addition to the normal cost of gravity water delivery, thereby increasing the annual cost of delivery of water to such lands, in many cases, far above the amount of the annual assessment which the District levies against such lands. The Committee therefore believes that the major portion of the burden of carrying the District's funded debt must, for the

time being at least and for a considerable time to come, be met almost in its entirety by the owners of the 74,000 acres of better land below gravity and by the residents of the incorporated cities and towns. As an example of the heavy irrigation district charges borne in the past by property owners of the City of Merced, the following comparison sets forth the population and the 1932-33 irrigation district assessed value, assessment rate and the amount of assessment, for the cities of Merced, Modesto and Turlock:

1932-1933 IRRIGATION DISTRICT ASSESSMENT				
	1930 Population	Assessed Valuation	Assessment Rate	Amount of Assessment
Merced	7,063	\$1,740,400	\$8.90	\$154,895
Modesto	13,847	1,970,920	3.10	61,098
Turlock	4,256	714,000	3.00	22,420

(b) Failure to Colonize the District.

The Merced Irrigation District began active operation of its irrigation works in 1926. The Crocker-Huffman system (which the District purchased) had been serving some 50,000 acres with water. Such acreage comprised the better and more highly developed lands in the District. Much of the new area brought into the system was held in large tracts by real estate companies for subsequent contemplated development. The subdivision, sale and development of such large tracts progressed slowly and unsatisfactorily, and had only really begun when the collapse in the prices of farm commodities and the value of farm lands put an end to further colonization of the District. As a result, the failure to

properly colonize the large relatively undeveloped areas being offered for sale, prevented such lands from assuming their full share of the District's financial burdens.

(c) Irregularity of Annual Power Revenue.

The financial condition of the Merced Irrigation District is always menaced by the extreme fluctuations in the amount of revenue which the District receives annually from the sale of power. While the District has an advantageous contract for the sale of the power which it generates, the amount of power generated in any year depends entirely upon the amount and character of the flow of the Merced River. From 1927, when the power house completed its first full calendar year of operations, until 1933, receipts from the sale of power revenue have been as follows:

Calendar Year	Receipts From Sale of Power
1927	\$569,204
1928	485,757
1929	296,412
1930	308,931
1931	95,917
1932	602,510
1933	316,924

In addition to the above \$602,510 received in 1932, the District is claiming an additional \$18,664, and such item is now in litigation. Excluding the abnormally dry year of 1931, the power revenue has

averaged approximately \$430,000 annually. Based upon past records of the flow of the Merced River, engineers have estimated that the annual income from the sale of power over a long period of years should average between \$450,000 and \$500,000. It has been the practice of the District to meet its funded debt requirements from the proceeds of assessments and to pay the major portion of its operating and capital expenditures, which will average approximately \$450,000 a year, from funds received from the sale of power. In the absence of a reserve being set aside to equalize the extreme variation in the annual income [632] from the sale of power, the District cannot rely in any particular year upon power income alone to provide sufficient funds for its operations.

(d) Collapse of farm prices.

The collapse of farm prices and values of farm property during the past few years is all too familiar a subject to need elaboration here. Its effect, however, is graphically portrayed in the mounting delinquency which has attended the collection of assessments in the District:

Assessment Year	Amount of Assessment	Amount of Assessment Unpaid at Time of Delinquency	Percentage of Delinquency
1930-31	\$1,194,585	\$210,596	17.6%
1931-32	1,071,567	401,361	37.4%
1932-33	1,148,483	721,188	62.8%

The delinquent assessments (exclusive of interest, penalties and costs) now standing against lands

within the District aggregate more than \$1,167,000. The District has taken title to more than 10,000 acres of land for non payment of assessments and an additional 6,000 acres of land are subject to deed to the District for the same cause.

In the early part of 1933, the Agricultural Experiment Station of the College of Agriculture of the University of California completed a survey of farm incomes and expenses in the Merced Irrigation District from 1926 to 1931, inclusive (the "Benedict" report). While the compilation of such a survey is attended with extreme difficulty and the results must be carefully interpreted, the general conclusions brought forth were that farm income available for the payment of District assessments during 1930-31-32 declined at a rate even greater than the fall of farm prices, and that during those years, the irrigation district assessments required under the present debt could be met out of the earnings of only a small portion of the District's best and most highly developed land.

3. General Terms of the Refunding Plan Adopted by the District.

There is enclosed for your information a copy of the resolution of the Board of Directors of the District dated October 17, 1933 together with a summary and analysis of the Plan set forth in its resolution. Briefly the subjects covered by the Plan are:

(a) Description of Refunding Bonds.

There are now outstanding \$16,190,000 par value

of unmatured bonds of the Merced Irrigation District, due serially from 1934 to 1966, of which \$12,070,000 are 6% serial bonds and \$4,120,000 are 5½% serial bonds. The Plan provides that the present 6% serial bonds shall be exchanged for 4.4% sinking fund bonds and the present 5½% serial bonds be exchanged for 4% sinking fund bonds, without any reduction of par value. Full fixed interest rates of 4.4% and 4% upon the refunding bonds will commence in 1942.

For the year 1933, the Plan provides that the District shall complete the payment of the bonds and coupons which were due January 1, 1933, but that no payment is to be made upon the coupons which were due July 1, 1933 and that the payment of the bonds and coupons which were due January 1, 1933 is to constitute in effect full payment of interest falling due during the entire year.

From 1934 to 1941, inclusive, the refunding bonds will bear interest in accordance with the following schedule:

Year	INTEREST PER \$1000 4.4% BOND			INTEREST PER \$1000 4% BOND		
	Fixed Interest	Contingent Interest	Total Interest	Interest Fixed	Contingent Interest	Total Interest
1934		\$22.00	\$22.00		\$20.00	\$20.00
1935	\$11.00	11.00	22.00	\$10.00	10.00	20.00
1936	11.00	11.00	22.00	10.00	10.00	20.00
1937	22.00	11.00	33.00	20.00	10.00	30.00
1938	22.00	11.00	33.00	20.00	10.00	30.00
1939	33.00	11.00	44.00	30.00	10.00	40.00
1940	33.00	11.00	44.00	30.00	10.00	40.00
1941	33.00	11.00	44.00	30.00	10.00	40.00

The above fixed interest will be payable in the customary manner, half on January 1, and the remainder on July 1 of each of the years shown; the contingent interest will be evidenced by Contingent Interest Coupons maturing on January 1, of the next succeeding year, i.e., the 1934 contingent interest will be evidenced by Contingent Interest Coupons maturing January 1, 1935. [633]

The Contingent Interest Coupons will be payable from a fund to be composed of a portion of the proceeds from the redemption of delinquent assessments and a portion of the revenues from the sale of power, as provided in the terms of the Plan. The Contingent Interest Coupons will be payable irrespective of their maturity dates, but will be payable in the order of their maturity dates as and when funds are available. They will constitute a permanent obligation of the District and the fund from which they are to be paid eventually will be continued in existence under the Plan until all of such contingent coupons have been paid in full.

(b) Sinking Fund Provisions.

The refunding bonds will mature in 1983. From 1934 to 1941, inclusive, the Plan provides that a portion of the annual revenue from the sale of power shall be used for the purchase of refunding bonds and, commencing in 1942, the Plan provides a schedule of annual sinking fund payments to retire at par all of the refunding bonds at or prior to maturity.

(c) Reserve Fund.

In order to equalize the irregularity of the District's annual income from the sale of power, the Plan provides for the creation of the emergency revolving fund to provide the District with working capital until funds are subsequently available from power revenue, assessments and other sources.

During the period of more than two and one-half years in which the Committee has been negotiating with the representatives of the Merced Irrigation District, the members have given a great deal of their time to properly inform themselves as to the conditions which must be met by any workable Refunding Plan. The Committee also has had the benefit of a comprehensive investigation of the underlying facts, not only by its own observers, but by the College of Agriculture of the University of California. In the opinion of the Committee, the Refunding Plan adopted by the District is designed to insure the maximum return to the bondholders and, at the same time, not to impose burdens upon the District which will be beyond the ability of the landowners to meet.

The Plan provides drastic temporary relief in order that the District may be cleared of an immediately impending burden of approximately \$1,200,000 of unpaid matured coupons and bonds. During the period of temporary relief, the Plan assures the District of sufficient funds to continue

in operation and permits the District to provide for the capital replacements and maintenance which have been deferred during the past three years of financial stringency. Through the creation of the emergency revolving fund, the Plan attempts to equalize the unpredictable irregularity of the District's annual income from the sale of power.

In the opinion of the Committee, in addition to according the temporary relief which appears to be vital to the rehabilitation of the District, the Plan will act to stabilize conditions within the District to such an extent that the present landowners will be encouraged to continue to operate their holdings and to resume payment of District assessments, and outside capital will be attracted to develop the potentially good irrigable farm land which is not now bearing its share of the District's financial burden.

As has been previously indicated, the District is severely burdened with the cost of delivering water to lands above gravity flow of water and to outlying areas of poor land. In order to release the District from its obligation to serve such areas with water, the Committee has assured the District that it will cooperate with the District to provide for the exclusion of such lands from the District. The assessed valuation of the total amount of lands so excluded, however, shall not exceed 8% of the entire assessed valuation of the District (based upon the 1933-1934 assessment roll). Inasmuch as the exclusion of any good lands from the District auto-

matically increases the burden upon the remaining lands, it is reasonable to assume that the exclusion of lands will be confined to those areas which are a financial burden to the District rather than a source of income. The Committee believes that such a provision for the exclusion of certain lands will directly benefit the bondholders through a reduction of the District's annual operating charges without a comparable corresponding loss of income.

The Committee has assured the District that it will cooperate in any application made by the District to secure Federal or State aid in the repurchase or refinancing of the District's bonds, and that in the event funds for such purpose are made available from a Federal or State agency, such offer will be submitted to the bondholders. [634]

The members of the Bondholders' Protective Committee will continue to serve without compensation for their services. The District has received the necessary authority to pay for the costs of effecting the Refunding Plan whether the Plan is declared operative or not, and is making provisions for such expenses. Accordingly, it is contemplated that the bondholders will not be required to pay any of the costs or expenses incident to the refunding except to the extent, if any, that the District shall fail to pay such expenses, in which event, no personal liability will exist on the depositing bondholders and the maximum expense chargeable to the deposited bonds will not exceed 2% of the face amount thereof. The legal opinion of Messrs.

Orrick, Palmer & Dahlquist, attorneys-at-law of San Francisco, certifying to the validity of the refunding bonds will be required prior to the actual issuance and delivery of the bonds.

For the convenience of those who have not already deposited their bonds, there is enclosed a Letter of Transmittal, which should be filled out, signed and forwarded, together with bonds to be deposited, to one of the following Depositaries:

The Anglo California National Bank of

San Francisco

Sansome and Market Streets

San Francisco, California

Bank of America National Trust and Savings
Association

485 California Street

San Francisco, California

Citizens National Trust & Savings Bank of
Los Angeles

Fifth and Spring Streets

Los Angeles, California

Security-First National Bank of Los Angeles

Sixth and Spring Streets

Los Angeles, California

Deposits may also be made through any of the branches of the above Depositaries.

If you have not already deposited your bonds, the Committee urges that you do so at once. Deposits must be made under the Deposit Agreement of March 1, 1932, copy of which may be obtained

from the Secretaries of the Committee. Under the terms of the Deposit Agreement, Depositors are entitled to notice and an opportunity to withdraw their bonds upon the actual adoption of the Plan by the Committee and prior to its consummation. More than \$5,800,000 of the District's outstanding bonds are already upon deposit with the Committee. Additional information is available at the offices of the Secretaries of the Committee: W. L. Temple, 485 California Street (Sutter 7995), San Francisco, or B. P. Lester, 621 South Spring Street (Mutual 2351), Los Angeles.

Yours very truly,
LIVINGSTON B. KEPLINGER,
Chairman,
THOS. W. BANKS,
Vice-Chairman,
CHARLES D. BATES,
MILO W. BEKINS,
REED J. BEKINS,
ARCHIBALD BORLAND,
HON. GEO. E. CROTHERS,
MARK C. ELWORTHY,
VICTOR ETIENNE, JR.,
ROBERT FULLERTON, JR.,
HON. JAMES N. GILLET,
M. VILAS HUBBARD,
MYFORD IRVINE.

December 15, 1933. [635]

PETITIONER'S EXHIBIT No. 38

Copy of proceedings in Circuit Court of Appeals, set out in Respondents' Exhibit "OO" at pages 333 to 339, inclusive. [637]

RESPONDENTS' EXHIBIT "A"

was a copy of check, voucher and demand for payment of interest, as follows:

No. 35288

Merced Irrigation District

Mercèd, California

December 29, 1936

Merced Branch

90		90
—	BANK OF AMERICA	—
337		337

National Trust and Savings Association

Merced, California

197845

To the Treasurer of Merced Irrigation District

Pay From A2566 Exactly \$151889 & 71 Cts Dollars

\$151,889.71 Second Refunding Bond Interest

To the Order of Federal Reserve Bank of

San Francisco

San Francisco

California

Authorized by Board of Directors

of Merced Irrigation District

(Signed) D. K. BARNELL

President

(Signed) H. P. SARGENT

Secretary [638]

[Endorsed on back]:

Received payment

FEDERAL RESERVE BANK OF
SAN FRANCISCO

Custodian and Fiscal Agent

Reconstruction Finance Corporation

Pay to the order of any Bank or Banker.

For collection only.

All prior endorsements guaranteed.

Dec. 30, 1936.

FEDERAL RESERVE BANK
OF SAN FRANCISCO

11-37 San Francisco, 11-37

California

Description—Interest for Period July 1 to Dec.
31, 1936, inc., on Reconstruction Finance Corp.,
Custodian Loans No. 475 & 475A

Amount—\$151,889.71.

Distribution

Amount—151889.71

Total

Vouchers Payable

December 29, 1936

Merced

No. 35288

Irrigation District

Refunding Bond Interest

\$151,889.71

Federal Reserve Bank of San Francisco

San Francisco

California

(Signed) E N

approved

(Signed) L. W. HESSE

approved for payment [639]

Mail All Checks to Custodian Bank

(This copy to be sent to borrower)

R. F. C. Form No. T-52 (Rev.) Date Dec. 22, 1936

Original

Treasurer, (Name)

Merced Irrigation District (City)

Merced, Calif. (State)

Gentlemen:

Following is a statement of your indebtedness to the Reconstruction Finance Corporation for..... interest which,.....will become due and payable on Jan. 1, 1937.

Interest is computed on the daily balance of the principal beginning with the date the proceeds of the loan were disbursed for the actual number of days on the basis of 365 days to the year.

Remittance should be made to this bank in immediately available funds or funds that will be available on the day the principal and/or interest become due and payable.

Very truly yours,

FEDERAL RESERVE BANK OF

SAN FRANCISCO (Custodian)

(Signed) CHESTER D. PHILLIPS

Assistant Cashier

Effective Date	Principal Balance	No. of Days	Dollar Days	Interest Rate	Interest
Custodian Loan No. 475					
July 1, 1936...	\$7,487,569.28	184	\$1,377,712,747.52	4%	\$150,982.22
Custodian Loan No. 475-A					
July 1, 1936...	43,260.84	128			
Nov. 6, 1936...	44,805.87	21			
Nov. 27, 1936	51,501.00	35	8,280,845.79	4%	907.49
					<hr/> \$151,889.71

Order No.

Material Rec'd

Price O.K.

Extensions O.K.—E. N.

Charge—D-

[640]

RESPONDENTS' EXHIBIT "B"

was a letter from the Committee to the bondholders, dated Jan. 7, 1935, as follows:

To the Holders of Bonds of Merced Irrigation District:

Under date of December 15, 1933, the undersigned Bondholders' Protective Committee announced that a Refunding Plan had been formally adopted by the Board of Directors of the Merced Irrigation District, had received the approval of the California Districts Securities Commission, and had been approved by the voters of the District at an election held November 22, 1933. Concurrently with such announcement copies of such Plan were forwarded to bondholders. Up to the present time, the holders of approximately 60% of the District's outstanding bonds have deposited or agreed to deposit with the Committee.

Bondholders were notified in the letter of December 15, 1933 that the District was making appli-

cation to secure Federal aid in the repurchase or refinancing of the District's bonds. Holders were also notified that the Committee had assured the District that in the event funds for such purpose should be made available from a Federal or State agency, such offer would be submitted to bondholders.

Negotiations for a loan from the Reconstruction Finance Corporation have been actively carried on during a period of the past several months, between the District and the Reconstruction Finance Corporation. The District has recently informed the Committee that the Reconstruction Finance Corporation has approved the District's application for a loan which will enable the District, conditioned upon an agreement being effected between the District and its bondholders, to pay \$515.01 for each \$1,000 bond of its outstanding bonded indebtedness.

While the Committee feels that the figure offered pursuant to the Reconstruction Finance Corporation loan is unduly low it is, however, important that the Committee be advised of the wishes of bondholders with reference to the acceptance or rejection thereof. Arguments which might be advanced in favor of, or in opposition to such offer would be based largely upon the circumstances of the individual bondholder. As a consequence, the Committee refrains from advancing any of such arguments in order that it may not appear to seek to influence the bondholders in their decision.

We are enclosing for your use a questionnaire which we request that you complete and return in the enclosed stamped envelope to reach us not later

than January 26, 1935. As the Committee's action must depend to a great extent upon the expression of the bondholders in this manner, all holders are urged to express themselves immediately.

Holders are urged to cooperate to the fullest extent possible with the Committee in whatever course may be decided upon after the Committee has received this expression of opinion. [642]

Merced Irrigation District

QUESTIONNAIRE

To be mailed to the Secretary of the
Bondholders' Protective Committee not later than
January 26, 1935.

Date.....

Merced Irrigation District,
Bondholders' Protective Committee,
485 California Street,
San Francisco, California.

The undersigned holder of bonds of Merced Irrigation District is in favor of the method of re-financing checked below:

- () Cash settlement of \$515.01 per \$1,000 bond
from the proceeds of a loan from the Recon-
struction Finance Corporation to the District.
- () Refunding Plan dated December 1, 1933.

The expression of opinion contained herein shall not be considered as an offer or acceptance, nor shall the undersigned be considered to be bound by this expression to any course of action whatsoever.

Name.....

Par value of bonds owned \$.....

Deposited with Committee \$.....

January 7, 1935. [643]

RESPONDENTS' EXHIBIT "C"

was a letter from the District to the bondholders, dated January 10, 1935, as follows:

"To the Holders of Bonds of Merced Irrigation District:

As a result of a meeting held between representatives of the Bondholders' Protective Committee and the Merced Irrigation District it was deemed advisable for the Committee to send to you the questionnaire dated January 7, 1935, relative to proposed methods of refinancing, which you have no doubt received.

In the event that you are not already familiar with the proposed cash settlement method of refinancing set forth in the questionnaire, the terms thereof are briefly as follows:

The Reconstruction Finance Corporation has authorized a loan to the Merced Irrigation District which will enable the District, conditioned upon an agreement being effected between the District and its bondholders, to pay \$515.01 for each \$1,000 bond of its outstanding bond indebtedness. Also if the loan is consummated, interest at the rate of 4% per annum on the liquidating price of the bonds will be paid from the date of deposit under the above cash settlement plan to the date of the consummation of the loan as provided in the resolution of the Reconstruction Finance Corporation granting the loan.

The District will pay all expenses in connection with the above cash method of refinancing, including, if the plan is consummated, any costs incident to securing release of bonds now on deposit under the Deposit Agreement dated March 1, 1932, and in no event will bondholders be required to pay such expenses.

It is essential that bondholders give this matter their earliest consideration; otherwise, the time limit set by the Reconstruction Finance Corporation for consummation of the loan will expire. The present time limit is February 28, 1935, unless further extended by the Reconstruction Finance Corporation.

During the past three years bondholders have been fully informed as to the seriousness of the District's financial condition. It is now impossible for the District to meet its present bond interest requirements and the possibility of its being able to do so in the future is most uncertain—therefore, the undersigned Board of Directors of the Merced Irrigation District is of the opinion that the cash purchase of the District's outstanding bonds, as above provided, furnishes the best possible solution of the District's financial problems for the bondholders and the District." [644]

RESPONDENTS' EXHIBIT "D"

was a list of payments by district in taking up bonds, reading as follows: [645]

Interest payments at 4 per cent on the amount of cash offer made to the various depositaries for account of Assenting Bondholders on Bonds deposited under "Cash Plan" from the date the bonds were made available by the Bondholders to the time of actual disbursement by the R. F. C.

Warrant			
Date	Number		Amount
10-3-35	33265	Bank of America N.T. & S.A., S.F.....	\$80,796.45
"	33267	Bank of America, S.F. For the Account of Bank of America N.T. & S.A., L.A.....	4,089.03
"	33268	Bank of America, S.F. For the Account of Citizens Nat'l. Trust & Savings Bank, L.A.....	26,215.03
"	33269	Bank of America, S.F. For the Account of Anglo-California National Bank of S.F.....	16,258.98
"	33270	Bank of America, S.F. For the Account of Security First National Bank of L.A.....	32,372.52
"	33271	Bank of America, S.F. For the Account of Capitol National Bank, Sacramento	434.70
"	33272	Bank of America, S.F. For the Account of Crocker First Nat'l. Bank, S.F.....	7,091.00
"	33274	Bank of America, S.F. Account of St. Louis Union Trust Co., St. Louis, Mo.....	50.12
10-8-35	33277	Merced County Treasurer.....	587.18
"	33278	Mary J. F. and D. M. Young, Stockton	132.30
			168,027.31
			[646]

RESPONDENTS' EXHIBIT "E"

was a statement of interest payments made to the Federal Reserve Bank of San Francisco on account of Reconstruction Finance Corporation Custodian Loans Nos. 475 and 475A, as follows:

Warrant		For Period	Amount
Date	No.		
12-31-35	33545	10-4-35 to 12-30-35.....	71,256.72
1-7-36	33575	12-31-35	7.51
6-6-36	34029	1-1-36 to 6-30-36.....	149,576.48
12-29-36	35288	7-1-36 to 12-31-36.....	151,889.71
6-8-37	36239	1-1-37 to 6-30-37.....	149,542.11
11-30-37	37858	7-1-37 to 12-31-37.....	152,411.78
6-21-38	38463	1-1-38 to 6-30-38.....	150,000.28
			[647]

RESPONDENTS' EXHIBIT "F"

was a letter from Albert L. Strong, Special Assistant Drainage, Levee and Irrigation Division, to the Merced District, dated October 21, 1938, as follows:

"The rate of the proposed levy for the current year has been requested but to date it has not been received.

We wish to remind you that your levy should be submitted to us for our consideration and approval before the District executes its levy resolution. Therefore, please forward it at an early date." [648]

RESPONDENTS' EXHIBIT No. G

LETTER

This exhibit was a letter dated November 3, 1938, from Merced Irrigation District, signed by its secretary, addressed to Frank J. Keenan as Chief of the Drainage, Levy and Irrigation District Division of the Reconstruction Finance Corporation, submitting a copy of a report presented to the Board of Directors, showing the economic condition of the district during the year 1938, which had been presented to the Board prior to the fixing of the tax levy for the year 1938-39, also a copy of the resolution fixing the tax rate. The report was a routine report made to the Reconstruction Finance Corporation and among other things estimated the power revenue at \$500.00.

The communication explained the fixing of the tax rate as being made pursuant to Section 11 of the California District Securities Commission Act.

[649]

RESPONDENTS' EXHIBIT No. H

LETTER OF NOV. 10, 1938

This was a letter dated November 10, 1938 from the Reconstruction Finance Corporation to the Merced Irrigation District acknowledging transmittal of a certified copy of the resolution of October 8, fixing the tax rate. [650]

(RESPONDENT'S EXHIBIT "I")

MERCED IRRIGATION DISTRICT

Was Balance Sheet of the District for the Period Ending June 30, 1935, Reading as Follows—to wit:
BALANCE SHEET FOR PERIOD ENDING JUNE 30, 1935

Assets	FUNDS			Total All Funds
	Construction	General	Bond Prin. & Interest	
Current Assets:				
Treasurer (Cash)		\$ 516,582.53*	\$ 5,208.55†	\$ 521,791.08
Sec'y's Revolving Fund		5,200.00		5,200.00
Uncollected Assessments				
1st Installment 1934-35		20,742.07		20,742.07
2nd Installment 1934-35		16,536.10		16,536.10
Uncollected Penalties		3,781.44		3,781.44
Tax Sale Certificates		883,407.21		883,407.21
Sundry Debtors		44,181.95		44,181.95
Total Current Assets		1,490,431.30	5,208.55	1,495,639.85
Capital Assets:				
General Properties	\$17,095,725.66	1,632,493.62		18,728,219.28
General Equipment		88,221.22		88,221.22
Total Capital Assets	17,095,725.66	1,720,714.84		18,816,440.50
Less Depreciation	523,990.88			523,990.88
Net Capital Assets	16,571,734.78	1,720,714.84		18,292,449.62
Total Assets	16,571,734.78	3,211,146.14	5,208.55	19,788,089.47

FUNDS				
Assets	Construction	General	Bond Prin. & Interest	Total All Funds
Liabilities				
Current Liabilities				
Warrants Payable, (Outsdy.)		9,475.76		9,475.76
Unpd. Mtrd. Bond Coupons			1,917,675.00	1,917,675.00
Accrued Int. at 7% on Reg. Coupons				
Unpaid Matd. Bonds			157,000.00	157,000.00
Acrd. Int. at 7% on Reg. Bds.			131,000.00	131,000.00
Bond Interest Accruing			4,400.00	4,400.00
Crocker-Huffman Crtes.—Due July 1, 1934 and Prior		26,474.37	471,500.00	471,500.00
Sundry Creditors		985.00		26,474.37 985.00
Total Current Debts		36,935.13	2,681,575.00	2,718,510.13
Capital Liabilities				
General Fund Surplus		1,453,496.17		1,453,496.17
Bond Fund Surplus			2,676,366.45†	2,676,366.45‡
Bond Accounts	16,191,000.00			16,191,000.00
Capital Surplus	380,734.78	1,720,714.84		2,101,449.62
Total Capital Debts	16,571,734.78	3,174,211.01	2,676,366.45‡	17,069,579.34
Total Liabilities	\$16,571,734.78	\$3,211,146.14	\$ 5,208.55	\$19,788,089.47

*Includes \$76,448.30 frozen deposit in defunct bank.

†Includes \$1,251.20 bond principal fund balance available for \$1,000.00.

Matured bond January 1, 1933 not presented.

‡Denotes figures in red.

Merced Irrigation District—1933

INCOME

Year Ending December 31, 1933

(Exhibit "B")

Current Taxes		
Second Installment 1932-33.....	\$251,933.98	\$306,327.30
First Installment 1933-34.....	54,393.32	
Delinquent Taxes 1928-29.....	25.25	
Delinquent Taxes 1929-30.....	576.98	
Delinquent Taxes 1930-31.....	2,727.47	
Delinquent Taxes 1931-32.....	21,637.37	
Partial Redemptions under Senate Bill No. 65.....	5,637.23	30,604.30
Interest on Redemptions.....	7,125.84	
Water Tolls.....	10,341.50	
Real Estate Rentals.....	16,943.64	
Sale of Electric Energy.....	316,924.89	
Interest on Bank Balances.....	1,197.47	
Tax Property Sales.....	89.40	
Equipment Rentals.....	1,240.50	353,863.24
Total Income.....		690,794.84

EXPENDITURES

Year Ending December 31, 1933

Capital Expenditures	\$ 32,692.42	
Administration and Overhead	43,190.21	
Refinancing Expense	37,019.40	
Special Survey (Economic)	1,635.19	
Refunds and Insurance	18,081.83	
Irrigation Operations	118,581.38	
Drainage Operations	77,075.15	
Powerhouse Operation	19,221.40	
Crocker-Huffman Con't. Pmts.	57,374.72	
Deeded Tax Prop. Expense	293.04	
Drainage Contracts	25,618.49	\$430,783.23
<hr/>		
Less Depreciation on Equipment	9,150.90	
Accounts Receivable	(3,643.46)	5,507.44
<hr/>		
Total General Fund		425,275.79
Bond Interest Fund		
Bond Interest Coupons	357,305.00	
Interest on Registered Coupons	7,360.85	
<hr/>		
Bond Principal Fund		
Bond Retirements	24,500.00	
Interest on Registered Bonds	416.70	
<hr/>		
Total Expenditures		24,916.70
<hr/>		
		\$814,858.34
		[652]

vs. Merced Irr. Dist., et al.

769

Merced Irrigation District—1934

INCOME

Year Ending December 31, 1934
(Exhibit "B")

Taxes

Second Installment, 1933-34.....	\$ 33,225.71	
First Installment 1934-35.....	102,729.66	\$135,955.37

Delinquent Taxes 1928-29.....	71.77	
Delinquent Taxes 1929-30.....	1,788.39	
Delinquent Taxes 1930-31.....	22,609.05	
Delinquent Taxes 1931-32.....	71,591.68	
Delinquent Taxes 1932-33.....	162,191.38	
Partial Redemptions under Senate Bills Nos. 65 and 3.....	32,481.01	290,733.28

Other Income

Interest on Tax Redemptions.....	40,415.56	
Water Tolls.....	1,048.93	
Real Estate Rentals.....	14,608.84	
Sale of Electric Energy.....	191,936.39	
Interest on Bank Balances.....	2,344.72	
Tax Property Sales.....	1,056.60	
Misc. Equipment Rentals.....	779.47	
		252,190.51
		<u>\$678,879.16</u>

EXPENDITURES

Year Ending December 31, 1934

Capital Expenditures	40,933.48	
Administration and Overhead	37,820.55	
Refinancing Expense	32,370.45	
Refunds and Insurance	8,697.43	
Irrigation Operations	107,453.48	
Drainage Operations	64,837.86	
Powerhouse Operation	15,988.69	
Crocker-Huffman Contract Payments	39,741.81	
Dedeed Tax Property Expense	1,910.38	
Drainage Contracts	11,418.03	
		<hr/>
Total Capital and Operation		\$361,172.16
Less Depreciation on Equipment	7,860.77	
Accounts Receivable	(119.55)	
		<hr/>
Total General Fund		353,430.94
Bond Interest Fund		
Bond Interest Coupons	116,350.00	
Interest on Registered Coupons	9,176.32	
		<hr/>
Bond Principal Fund		
Bond Retirements	34,500.00	
Interest on Registered Bonds	2,288.75	
		<hr/>
		36,788.75
		<hr/>
		\$515,746.01
		<hr/>

[653]

Merced Irrigation District

INCOME FOR PERIOD

January 1 to June 30, 1935

(Exhibit "B")

Water Tolls	\$ 3,032.55
Real Estate Rentals.....	12,848.11
Miscellaneous Equipment Rentals.....	241.50
Interest Tax Redemptions.....	24,599.79
Power Revenue	255,323.89
Interest on Bank Balances.....	1,128.32
Tax Property Sales.....	370.97
Delinquent Taxes, 1929-30.....	3,665.88
Delinquent Taxes, 1930-31.....	5,113.22
Delinquent Taxes, 1931-32.....	9,165.40
Delinquent Taxes, 1932-33.....	18,894.09
Delinquent Taxes, 1933-34.....	1,210.15
Current Taxes, 1934-35.....	65,921.60
Penalties and Costs, 1934-35.....	1,385.97
Partial Payment Redemption Taxes.....	37,987.13
<hr/>	
Total Income	\$440,888.57

EXPENDITURES FOR PERIOD

January 1 to June 30, 1935

Capital Expenditures	\$ 22,607.72
Administration and Overhead.....	27,407.02
Refinance Expense on Old Refunding Plan.....	92,055.48
Refinance Expense on R.F.C. Cash Plan.....	18,973.05
Refunds—Insurance and Damages, etc.....	13,527.97
Irrigation Operations	48,728.32
Drainage Operations	22,932.54
Garage and Shop.....	7,157.66
Powerhouse Operation	11,164.36
Bond Interest and Retirement.....	2,054.08
<hr/>	
Total	\$266,608.20
Less—Accounts Receivable	\$4,226.51
Deferred Income	2,170.59
<hr/>	
Total Expenditures	\$260,211.10

(DLI & D—12/22/34)

Re: Merced Irrigation District
AFFIDAVIT AS TO FINANCIAL
STATEMENT

The undersigned D. K. Barnell, President and H. P. Sargent, Secretary of the Board of Directors, of the above District being first duly sworn say:

That they have access to the records of the above District, and from an examination thereof, and otherwise, are familiar with the subject matter of this affidavit;

That attached hereto is a statement accurately reflecting all present assets and liabilities of the District; (see Exhibit A)

That the financial condition of the District has not materially changed since the date of the application of the above District for a refinancing loan from Reconstruction Finance Corporation, except as reflected in the attached statement of receipts and disbursement. (See Exhibit B)

The attached statements are identified by the signatures of the undersigned.

.....
President

.....
Secretary

Subscribed and sworn to before me this the.....
day of....., 1935.

.....
Notary Public in and for the County of Merced,
State of California.

My Commission expires February 6, 1935. [655]

RESPONDENTS' EXHIBIT "J"

This exhibit was annual report submitted by the District to the Reconstruction Finance Corporation, as follows: [656]

R. F. C. Form DR-45

Reconstruction Finance Corporation
Drainage, Levee and Irrigation Division

ANNUAL REPORT
(Submit 3 Copies)

Docket No. Ref. 58

Name of Borrower Merced Irrigation District.

Address Merced, California.

Name and Title of Officer Submitting H. P. Sargent, Secretary.

Address of Officer Submitting Merced, California.

Names and Titles of Officers and Governing Board

D. K. Barnell, President Board of Directors

E. B. Maze, Director

J. A. Wolf, Director

W. H. Robinson, Director

E. B. Wood, Director

Jas. R. McHenry, Treasurer

H. P. Sargent, Secretary

J. A. Law, Assessor-Collector

L. W. Hesse, Superintendent

R. V. Meikle, Consulting Engineer

H. K. Landram & C. Ray Robinson, Attorneys

Stephen W. Downey, Special Attorney on Re-financing

Period from January 1, 1937 to December 31, 1937.

Principal Indebtedness Due R. F. C. \$7,560,185.69

Date December 31, 1937. [657]

IRRIGATION DISTRICT BALANCE SHEET

as of December 31, 1937

vs. Merced Irr. Dist., et al.

775

Current Assets	Interest and Sinking	Maintenance and Operation	All Other	Total
Cash on Hand.....	\$* 627,049.76	\$ 521,271.73	\$1,209.80	\$ 1,149,531.29
a. Secretary's Revolving Fund		5,200.00		5,200.00
b. Trustee's Cash				
Current Assessments Unpaid (1937-38)		136,792.62		136,792.62
Delinquent Assessments Unpaid		280,087.13		280,087.13
Unpaid Penalties		2,076.11		2,076.11
Water Consumers				
Power Consumers				
Notes Payable				
A. Trustee Notes				
Accounts Payable				
Bond Int. Paid in Advance				
Due on Land Con't				
Inventory				
All Other (List) Lease Agreements				
Surpl. Wtr. Cons.				
TOTAL	627,049.76	1,036,550.54	1,209.80	1,664,810.10

5,782.07

20,672.24

33,490.03

8,126.84

23,051.77

Current Assets	Interest and Sinking	Maintenance and Operation	All Other	Total
General Properties	16,191,209.83	1,645,836.83		17,837,046.66
Equipment		65,546.62		65,546.62
District Owned Landx		647,063.75		647,063.75
All Other (List)				
TOTAL	\$16,191,209.83	\$2,358,447.20		\$18,549,657.03
TOTAL ALL ASSETS	\$16,818,259.59	\$3,394,997.74	\$1,209.80	\$20,214,467.13

(\$347,927.34 Refunding Bond Interest

*Includes (\$279,122.42 Refunding Reserve

xDedeed Tax Land

Certified :

Title

[658]

IRRIGATION DISTRICT BALANCE SHEET

As of December 31, 1937

Current Liabilities	Interest and Sinking	Maintenance & Operation	All Other	Total
Warrants Outstanding		\$ 18,233.28		\$ 18,233.28
Payrolls				
Bonds Payable				
Old Bond Account*			2,020,909.86	2,020,909.86
(Carry Old Bonds Outstanding at face plus interest)				
Notes Payable				
Accounts Payable				
Reserves				
Sundry Creditors		69.72		69.72
All Other (List)				
Crocker-Huffman Contracts		58,000.00		58,000.00
Drainage Contracts		8,775.00		8,775.00
Total		85,078.00	2,020,909.86	2,105,987.86

Fixed Liabilities	Interest and Sinking	Maintenance & Operation	All Other	Total
Debt to R. F. C.	7,560,185.69			7,560,185.69
All Other Funded Debt (Do not include outstanding bonds of issues to be re- financed)				
Surpluses—				
a. Bond Fund			x2,019,700.06	x2,019,700.06
b. Gen. Fund M. & O		951,472.54		951,472.54
c. Capital	9,258,073.90	2,172,159.17		11,430,233.07
All Other (List)				
Crocker-Huffman Contracts		186,288.03		186,288.03
Total	16,818,259.59	3,309,919.74	x2,019,700.06	18,108,479.27
TOTAL ALL LIABILITIES	\$16,818,259.59	\$3,394,997.74	\$1,209.80	\$20,214,467.13

*Outstanding Bonds and Coupons Other Than R. F. C.—

Bonds \$1,509,000.00

Coupons (Mat. to 1-1-38 Inc.) 455,825.00

Int. @ 7% on Reg. Bonds &

Coupons 56,084.86

\$2,020,909.86

Certified:

Title

IRRIGATION DISTRICT RECEIPTS AND DISBURSEMENTS

Period from 1-1-37 to 12-31-37

RECEIPTS

Cash on Hand (at beginning of period)		\$1,005,204.58
Current Assessments		\$324,623.15
a. Bond and Interest	\$	
b. Flat Rate (M. and O.)	\$324,623.15	
Delinquent Assessments	\$	
a. Bond and Interest	\$	
b. Flat Rate (M. and O.)	\$	
Sales Certificates Redeemed	\$ 97,407.39	
Interest on Certificates of Sale	\$ 21,076.52	
Penalties and Costs	\$ 1,103.71	

Land Sales	\$ 22,418.60	\$1,299,543.72
Land Rentals	\$ 44,051.12	
Interest on Bank Deposits	\$ 8,298.09	
Water Sales and Tolls	\$ 16,048.60	
Power Sales	\$602,008.94	
Transfer of Funds (from General to Ref. Reserve)	\$ 92,200.00	
All Other (List)		
Misc. Equipment Rentals	\$ 136.75	
Inclusion Fee	\$ 170.85	
TOTAL RECEIPTS		
Total Receipts plus cash on hand at beginning of period		\$2,234,748.30

Certified

Title

[660]

IRRIGATION DISTRICT DISBURSEMENTS

Period from January 1, 1937 to December 31, 1937

Bond and Interest

Bonds paid R. F. C.....	\$.....	
Interest paid R. F. C.....	\$301,953.89	
Total paid on Old Bond Accounts.....	\$.....	
All Other (list)	\$.....	
	\$.....	
	\$.....	
	\$.....	\$ 301,953.89

Maintenance and Operation

Drainage System	\$111,523.07	
Dams and Reservoirs	\$.....	
Canals and Laterals—Distribution of Water.....	\$168,975.77	
Pipes, Flumes and Siphons	\$.....	
Irrigation Pumping—Fuel and Power.....	\$.....	
Pumping — Salaries.....	\$.....	
Other than Power &		
Salaries.....	\$.....	\$.....
Water Purchased	\$.....	
Automobile Expenses	\$.....	
Insurance—Compensation	\$ 4,431.11	
Fire & Auto., Power House.....	\$11,225.58	\$ 15,656.69
All Other (list)		
Power House Operation.....	\$ 21,045.54	
	\$.....	\$ 317,201.07

Administration

Directors' Fees and Salaries.....	\$ 3,254.88	
Engineering & Superintendence.....	\$ 18,864.41	
All Other Office Salaries & Expense.....	\$ 23,763.16	
Bond Premiums (Fidelity)	\$ 450.00	
All Other (list)		
	\$.....	\$ 46,332.45

General Expense

Legal Services	\$	3,280.09	
Refinancing	\$	16,928.90	
Damage Payments	\$	450.25	
Crocker-Huffman Contract Payments.....	\$	125,011.20	
Drainage Contract Payments	\$	11,251.67	
State and County Tax on District Owned Lands	\$		
Dues and Subscriptions	\$		
All Other (list)			
Deeded Tax Property Expense.....	\$	5,567.98	
	\$		\$ 162,490.09

Capital Expenditure:

Structures

a. Canals, Lining, Structures, etc.....	\$83,816.57	
b. Pipe Lines, Flumes & Siphons.....	\$	
c. Pumping Plants (Drainage)	\$ 7,100.00	
d. Dams and Reservoirs.....	\$ 3,781.88	\$ 94,698.45

All Other (list)

Materials & Equipment (Less Depr.).....	\$	7,967.38	
Lands & Buildings.....	\$	682.49	\$ 103,348.32

Transfer of Funds—Gen. to Ref. Reserve.....	\$	92,200.00
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Warrants of Former Years Paid.....	\$	
------------------------------------	----	--

Loss Defunct Farmers & Merchants Bank.....	\$	74,724.47
--	----	-----------

TOTAL DISBURSEMENTS & LOSS.....		\$1,098,250.29
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Cash on Hand at End of Period.....		\$1,136,498.01
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Certified:.....

Title

[661]

ESTIMATED INCOME

For Year Ending December 31, 1938

Current Assessments	\$292,230.00
Sales Certificate Redemptions.....	60,167.00
Land Rentals	40,000.00
Interest on Bank Balances.....	3,000.00
Water Sales and Tolls.....	10,500.00
Power Sales	500,000.00
Misc. Equipment Rentals.....	500.00
	<u>\$906,605.00</u>

ESTIMATED REQUIREMENTS

For Year Ending December 31, 1938

Maintenance and Operation		
Drainage System	\$105,000.00	
Canals and Laterals—Dist. Water.....	161,000.00	
Insurance—Compensation	\$ 4,000.00	
Fire	500.00	4,500.00
	<u>21,500.00</u>	
Power House Operation.....		292,000.00
Administration		
Director's Fees and Expense.....	3,500.00	
Engineering and Superintendence.....	19,000.00	
Office Salaries and Expense.....	24,830.00	47,330.00
General Expense		
Legal Services	5,000.00	
Refinancing	15,000.00	
Damage Payments and Refunds.....	500.00	
Crocker-Huffman Con't. Pay'mets.....	58,000.00	
Drainage Contracts	8,775.00	87,275.00
Capital Maintenance		
Canal Lining, Structure, etc.....	51,000.00	
Pumping Plants—Drainage	24,000.00	
Operating Equipment	5,000.00	80,000.00
Total		<u>\$506,605.00</u>
Refunding Plan Obligations.....		400,000.00
Grand Total		<u>\$906,605.00</u>

[Endorsed]: Respondents' Exhibit J. Filed November 22, 1938. [662]

RESPONDENTS' EXHIBIT "K"

This exhibit was semi-annual report of the district, as follows: [663]

R. F. C. Form DR-45

Reconstruction Finance Corporation
Drainage, Levee and Irrigation Division

Docket No. Ref. 58.

Name of Borrower—Merced Irrigation District.

Address—Merced, California.

Name and Title of Officer Submitting—H. P. Sargent, Secretary.

Address of Officer Submitting—Merced, California.

Names and Titles of Officers and Governing Board

D. K. Barnell, President Board of Directors.

E. B. Maze, Director.

J. A. Wolf, Director.

W. H. Robinson, Director.

B. D. Wood, Director.

Jas. R. McHenry, Treasurer.

H. P. Sargent, Secretary.

J. A. Law, Assessor-Collector.

L. W. Hesse, Superintendent.

R. V. Heikle, Consulting Engineer.

H. K. Landram & C. Ray Robinson, Attorneys.

Stephen W. Downey, Special Attorney on Re-financing.

Period from January 1, 1938 to June 30, 1938.

Principal Indebtedness Due R.F.C.—\$7,564,-
303.77.

Date—July 15, 1938. [664]

IRRIGATION DISTRICT BALANCE SHEET

As of June 30, 1938

CURRENT ASSETS	Interest and Sinking	Maintenance and Operation	All Other	Total
Cash on Hand..... *\$	785,668.35	\$ 639,436.63	\$1,209.80	\$ 1,426,314.78
a. Secretary's Re- volving Fund.....		5,200.00		5,200.00
b. Trustee's Cash.....				
Current Assess- ments.....				
Unpaid 1937-38.....		16,734.36		16,734.36
Delinquent As- sessments Unpaid		201,575.77		201,575.77
Unpaid Penalties.....		1,483.93		1,483.93
Water Consumers.....				
Power Consumers.....				
Notes Payable.....				
A. Trustee Notes.....				
Accounts Payable.....		7,266.09		7,266.09
Bond Interest Paid in advance.....				
Due on Land				
Contracts.....		18,511.64		18,511.64
Inventory.....		28,678.95		28,678.95
All Other (List).....				
Lease Agreements.....		6,354.74		6,354.74
Surplus Water				
Con'ts.....		18,038.04		18,038.04
Total	785,668.35	943,280.15	1,209.80	1,750,158.30

FIXED ASSETS

General Prop- erties.....	\$16,191,209.83	\$1,687,537.08	\$	\$17,878,746.91
Equipment.....		61,893.98		61,893.99
District Owned				
Land.....		x 668,039.81		668,039.81
All Other (List).....				
Total.....		2,417,470.88		
Total All Assets.....	\$16,976,878.18	\$3,360,751.03	\$1,209.80	\$20,336,839.01

*Includes { \$505,413.81 Refunding Bond Interest
 { \$230,254.54 Refunding Reserve

xDeeded Tax Lands.

Certified :

Title

[665]

IRRIGATION DISTRICT BALANCE SHEET

As of June 30, 1938

CURRENT LIABILITIES	Interest and Sinking	Maintenance and Operation	All Other	Total
Warrants Outstanding	\$	\$ 20,030.64	\$	\$ 20,030.64
Payrolls				
Bonds Payable				
Coupons Payable			2,068,001.50	2,068,001.50
Old Bond Account				
(Carry Old Bond Outstanding at face plus interest)				
Notes Payable		4,645.15		4,645.15
Accounts Payable				
Reserves				
Sundry Creditors				
All Other (List)		54,805.74		54,805.74
(Cocker-Huffman Con'ts)		8,775.00		8,775.00
Drainage Contracts				
Total	\$	\$ 88,256.73	\$ 2,068,001.50	\$ 2,156,258.23

vs. Merced Irr. Dist., et al.

787

FIXED LIABILITIES

Debt to R.F.C.....	\$ 7,564,303.77	\$	\$ 7,564,303.77
All Other Funded Debt (Do not include outstanding bonds of issues to be refi- nanced)			
Surpluses			
a. Bond Fund		2,066,791.70	2,066,791.70
b. General Fund	855,023.42		855,023.42
c. Capital	9,412,574.41	2,231,182.85	11,643,757.26
All Other (List)			
Crocker-Huffman Con'ts.....	186,288.03		186,288.03
Total	\$16,976,878.18	\$3,272,494.30	\$18,181,370.98
Total All Liabilities.....	\$16,976,878.18	\$3,360,751.05	\$20,338,859.01

Note: Crocker-Huffman Contracts in amount \$51,805.74 paid 7-1-38.

*Outstanding Bonds and Coupons other than R.F.C.

Bonds	\$1,501,000.00
Coupons (Matured to 7-1-38 Inc.)	496,542.50
Int. @ 7% on Reg. Bonds & Coupons..	70,459.00

\$2,068,001.50

Certified

Title

[666]

IRRIGATION DISTRICT RECEIPTS AND DISBURSEMENTS

Period from 1-1-38 to 6-30-38

RECEIPTS

Cash on Hand (at beginning of period).....	\$1,136,498.01
Current Assessments	\$116,807.76
a. Bond and Interest..... \$.....	
b. Flat Rate (H. and O.).....	116,807.76
Delinquent Assessments	
a. Bond and Interest.....	
b. Flat Rate (M. and O.).....	
Sales Certificates Redeemed.....	54,441.88
Interest on Certificates of Sale.....	12,660.33
Penalties and Costs.....	1,248.49
Land Sales	6,117.23
Land Rentals	26,870.29
Interest on Bank Deposits.....	4,244.54
Water Sales and Tolls.....	6,056.05
Power Sales	407,002.11
Transfer of Funds.....	
All Other (List).....	
Misc. Equipment Rentals.....	128.88
Total Receipts	\$ 635,577.56
Total Receipts plus cash on hand at beginning of period	\$1,772,075.57

Certified.....

Title

[667]

IRRIGATION DISTRICT DISBURSEMENTS

Period from 1-1-38 to 6-30-38 1938

Bond and Interest

Bond paid R. F. C.....	\$.....
Interest paid R. F. C.....	150,000.28
Total paid on Old Bond Accounts.....	
All Other (List).....	

\$ 150,000.28

Maintenance and Operation

Levee System		
Drainage System	45,544.84	
Dams and Reservoirs		
Canals and Laterals	67,621.15	
Pipes, Flumes and Siphons		
Irrigation Pumping		
Fuel and Power	\$	
Pumping Salaries		
Other than Power and Salaries		
Water Purchased		
Automobile Expenses		
Insurance—		
Compensation	1,980.69	
Fire and Automobile	628.33	1,352.36

All Other (List)

Power House Operation	10,936.54	
Garage and Shop—Undistributed	9,651.49	

132,401.66

Administration

Directors' Fees and Salaries	1,409.76	
Engineering and Superintendence	10,115.04	
All Other Office Salaries and Expense	12,257.43	
Bond Premiums	437.60	
All Other (List)		

24,219.73

General Expense

Legal Services	1,212.50	
Refinancing	7,348.24	
Damage and Personal Injury		
C-H Contract Payments	3,194.26	
Telephone and Telegraph		
State and County Tax on District Owned		
Lands		
Dues and Subscriptions		
All Other (List)		
Deeded Tax Property Expense	4,560.19	

16,315.19

Capital Expenditure:

Structures

a. Canals—Lining, Structures, etc.	37,221.30	
b. Pipe Lines, Flumes and Siphons		
c. Pumping Plants	4,288.33	
d. Dams and Reservoirs.....	190.62	41,700.25

All Other (List)

Materials, Equipment, etc.....	4,045.48	37,654.77
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Transfer of Funds

Warrants of Former Years Paid.....

Total Disbursements 300,501.63

Cash on Hand at End of Period.....\$1,411,483.94

Certified:.....

Title

[Endorsed]: Respondents' Exhibit K. Filed Nov.
22, 1938. [668]

RESPONDENTS' EXHIBIT "L"

were three letters: Keenan to Sargent, dated March 8, 1938; Sargent to Keenan, dated March 22, 1938; and Keenan to Sargent, dated April 7, 1938, respectively, as follows:

"This is to thank you for your letter of March 1st, addressed to Mr. Strong, transmitting three copies of a report covering the operations of the District for the calendar year ended December 31, 1937. We have noted with interest the improvement in the financial position of the District.

The records in this office indicate that we hold as security for our advances old bonds of the District in a principal amount aggregating \$14,681,000.00, while the outstanding obligations still to be refinanced total \$1,746,942.62. The footnote on page 3 of the report, however, gives the aggregate principal amount of the outstanding bonds (held by others than the RFC) as \$1,509,000.00. Kindly advise which figure is correct.

(The following marginal note appears in pencil:)

Refer to last years explanation.

Cash on hand December 31st is shown on page 2 as totalling \$1,154,731.29, whereas the cash balance appear as \$1,136,498.01 on page 5. Please let us hear from you further in the matter.

(Following notation in pencil)

Cash Bal (Treasurer).....	1,154,731.29
Less outstanding Wts.....	18,233.28
Available Cash on hand.....	

\$1,136,498.01''

[669]

..With reference to your inquiry of March 8, 1938 pertaining to the figures representing the principal amount of old bonds of our District which are held by the Reconstruction Finance

Corporation and those which are still outstanding obligations, I will advise as follows:

Attached you will find a memorandum showing the par value of bonds for which the R.F.C. made advances of cash over a period from August 12, 1935 to July 14, 1937 wherein \$14,681,000 of par value of bonds were purchased for the sum of \$7,560,185.69. The original bonded debt to be refinanced was \$16,190,000 leaving a balance of \$1,509,000 principal amount. This latter figure is the correct figure, as I think your figures include the refinancing of the Crocker-Huffman water contracts obligation which, of course, have not been included in the refinancing.

With reference to your question as to cash on hand December 31, 1937 as shown on page 2 of the annual report, will advise that if this item was entitled "Treasurer's Balance" then the first two items on said page amounting to \$1,154,731.29 as we have entered it, is correct as the Treasurer's Balance on the balance sheet. The cash balance on page 5 of \$1,136,498.01 is the correct cash balance, the difference of \$18,233.28 being warrants heretofore issued but which have not yet cleared through the bank and thus do not show up in the balance sheet item or Treasurer's Balance. We usually have about this amount of warrants in the process of clearing during each two week period." [670]

MERCED IRRIGATION DISTRICT

Bonds Taken Up by R. F. C. Under Refinancing Plan
To December 31, 1937

794

West Coast Life Ins. Co., et al.,

			Advance By R. F. C.	
			Date	Amount
Schedule "A"				
Sup. #1	8-12-35	\$13,799,000.00		
" 2	8-27-35	145,000.00		
" 3	9-4-35	85,000.00		
" 4	9-24-35	26,000.00		
	10-4-35	16,000.00	\$14,071,000.00	\$7,245,917.64
" 5	10-31-35		10-14-35	67.17
" 6	11-21-35	76,000.00	10-31-35	39,140.76
" 7	12-1-35	47,000.00	11-21-35	24,205.47
" 8	12-19-35	71,000.00	12-1-35	36,565.71
" 9	12-31-35	132,000.00	12-19-35	67,980.64
" 10	1-30-36	133,000.00	12-31-35	68,496.33
" 11	4-27-36	10,000.00	1-30-36	5,285.56
" 12	5-29-36	53,000.00	4-27-36	27,295.53
" 13	11-6-36	31,000.00	5-29-36	15,965.31
" 14	11-27-36	3,000.00	11-6-36	1,545.03
" 15	7-14-37	13,000.00	11-27-36	6,695.13
		41,000.00	7-14-37	21,115.41

TOTALS

Coupons detached from Bonds.

\$14,681,000.00

\$7,560,185.69

[671]

“This will acknowledge receipt of your letter of March 22nd in reply to ours of March 8th having reference to the report of the District for the period ended December 31, 1937.

Regarding the outstanding obligations of the District still to be refinanced, the figure \$1,746,-942.62 as shown in our records consists of \$1,-509,000 principal amount of bonds and \$237,-942.62 Crocker-Huffman contracts. The contracts in this amount were included in the refinancing when the loan was recommitted April 28, 1937. You will note from Mr. Stephen W. Downey's letter to us of April 8, 1937 that the contracts had been reduced from \$480,018.25, the amount outstanding at the time of the authorization of the loan.

Your explanation of the amount of cash on hand is satisfactory.” [672]

RESPONDENTS' EXHIBIT No. M

Letter of June 24, 1938

This exhibit was a letter from Merced Irrigation District to Frank J. Keenan as Chief of the Drainage, Levy, and Irrigation Division stating that attached is Exhibit “A”, Supplement No. 18, showing deposit of \$1,000 additional bond with the Federal Reserve Bank of San Francisco for the account of

Reconstruction Finance Corporation under Merced Irrigation District refinancing plan.

Supplement No. 18 described as Exhibit "A" was attached and dated June 20, 1938, and was headed "Statement of Old Securities Deposited for Re-financing", "Merced Irrigation District—California". This printed form then set forth the bond number, date of issue, and description of the bond and coupons. Under column 7 was the "amount due owner" set forth at \$515.01, the name of the deposi-tary and the name and address of the owner. [673]

RESPONDENTS' EXHIBIT "N"

was a copy of a letter of confirmation by the Recon-struction Finance Corporation to Merced Irrigation District, dated July 3, 1937, showing return ac-knowledgment, dated July 13, 1937, as follows:

"Messrs. Haskins & Sells, Certified Public Accountants, are now engaged in making an audit of our accounts. In connection therewith, they desire to obtain confirmation of the unpaid balance on your loan as of the close of business December 31, 1936 which according to our rec-ords was as follows:

Loan #	Unpaid Balance
# 475	\$7,487,569.28
475—A	51,501.00
	(in pencil) 7,539,070.28

Kindly state, in the space provided below, whether or not this is in agreement with your records at that date. If not, please furnish the auditors with any information you may have which will assist them in locating the difference, detailing any payments which you may have remitted to us which were not credited to your account until after December 31, 1936, or explaining any other items which you believe will account for the discrepancy.

After signing your reply, please mail to Messrs. Haskins & Sells, P. O. Box 1805, Washington, D. C., in the inclosed self-addressed and stamped envelope."

"The above is in agreement with our records at December 31, 1936, with the following exceptions:"

[674]

RESPONDENTS' EXHIBIT "O"

was the certiorari record in the former Merced case admitted for identification and afterwards admitted as Respondents "OO". [Set forth in separate volume.] [675]

RESPONDENTS' EXHIBIT "P"

was the Petition for Debt Readjustment in the former Merced case offered on the plea of res adjudi-

cata, and which is set out in Respondents' Exhibit "OO" at page 10.

RESPONDENTS' EXHIBIT "Q"

were the Findings of Fact and Conclusions of Law in the former Merced case, and which is set out in Respondents' Exhibit "OO" at page 228.

RESPONDENTS' EXHIBIT "R"

was the decree of the United States District Court in the former Merced case, and which is set out in Respondents' Exhibit "OO" at page 275. [676]

RESPONDENTS' EXHIBIT "S"

PROCEEDINGS OF MERCED IRRIGATION
DISTRICT BONDHOLDERS' PROTEC-
TIVE COMMITTEE CONSTITUTED UN-
DER DEPOSIT AGREEMENT DATED
MARCH 1, 1932.

RESOLUTIONS ADOPTING CASH OFFER PLAN

Whereas, the Reconstruction Finance Corpora-
tion, on or about November 14, 1934, granted a loan
to the Merced Irrigation District for the purpose of
reducing and refinancing the outstanding indebted-

ness of said District, pursuant to which said Reconstruction Finance Corporation agreed to purchase said outstanding bonds at the price of \$515.01 for each \$1000 bond and also agreed to pay interest on said purchase price from the date said bonds are made available for refinancing until said bonds are taken up through the first disbursement of or from said loan, all as in said resolution of the Reconstruction Finance Corporation provided; and

Whereas, this Committee heretofore agreed with the Merced Irrigation District that if and when the Reconstruction Finance Corporation or any agency of the United States Government should make or grant a loan to said District for the purpose of enabling said District to refinance its outstanding indebtedness, this Committee would submit to the holders of bonds deposited with it the terms and conditions of such loan and accord to such holders the opportunity of availing themselves, if they so desired, of the right to participate in any such refinancing; and

Whereas, on January 7, 1935, this Committee notified the holders of bonds of said District that a loan had been granted to said District by the Reconstruction Finance Corporation, and requested the holders of said bonds to execute and return to this Committee a questionnaire in the form enclosed with said letter; and [677]

Whereas, the result of said questionnaire is as follows:

Number of Questionnaires Returned		Amount
658	In favor of R. F. C. Cash Offer Representing	\$10,431,000
141	In favor of Refunding Plan Representing	1,575,000
58	No preference representing	590,000
857		12,596,000

and

Whereas, a majority of the members of this Committee deem it necessary and advisable as a result of said questionnaire to submit to the holders of said bonds the question of acceptance or rejection of said offer of the Reconstruction Finance Corporation in accordance with the terms and conditions prescribed by said Deposit Agreement;

Now, Therefore, Be It Resolved:

1. The following plan (hereinafter referred to as the "Cash Offer Plan") is hereby approved and adopted by this Committee in accordance with the provisions of Article III of said Deposit Agreement, and the Chairman of this Committee is hereby authorized and directed to notify all holders of bonds of Merced Irrigation District of the fact of the adoption of said Cash Offer Plan by this Committee as follows, to-wit:

(Here follows Cash Offer Plan as set forth in Exhibit 13)

[Set forth at page 589 of this printed record.] [678]

2. The following depositaries are hereby appointed for the purpose of carrying out said Cash Offer Plan and each of said depositaries is hereby authorized and directed to accept deposits of bonds under said Cash Offer Plan, to-wit:

San Francisco

The Anglo-California National Bank of
San Francisco

No. 1 Sansome Street

Bank of America National Trust and Sav-
ings Association,

485 California Street

Los Angeles

Bank of America National Trust and Sav-
ings Association,

660 South Spring Street

Citizens National Trust and Savings Bank

457 South Spring Street,

Security-First National Bank of Los Angeles,

6th and Spring Streets

Sacramento

The Capital National Bank

7th and J Streets.

Each of said depositaries shall have all the rights, powers and privileges granted pursuant to the terms of said Deposit Agreement with like force and effect as though each thereof had been originally named in said Deposit Agreement.

3. Said depositaries, and each of them, are hereby authorized to accept deposits of bonds of said District under said Cash Offer Plan and to

issue certificates of deposit therefor in the form set forth in said Deposit Agreement and under and subject to the terms of said Deposit Agreement and said Cash Offer Plan. Said depositaries, and each of them, may if they so desire, but shall not be required to, endorse upon any certificate of deposit issued by them respectively, a stamp or statement in the following form: "Deposited under Cash Offer Plan dated February 1, 1935." By and with the consent in writing of the Chairman of this Committee any of said Depositaries is hereby authorized to accept deposit of said bonds of said District under said Cash Offer Plan upon such limited or restricted or special terms and conditions as may be approved by said [679] Chairman, and upon such conditions as he may prescribe with respect to the stamping or endorsement of any certificate of deposit issued in respect of such bonds. Unless otherwise specified in writing by the Chairman of the Committee all bonds deposited with said depositaries, or any of them, shall be held subject to all of the terms and conditions of said Cash Offer Plan and said Deposit Agreement and such deposit shall constitute an assent by the owner or holders of said bonds to the terms and conditions of said Cash Offer Plan and said Deposit Agreement and each such depositor shall be bound by and become a party to said Cash Offer Plan and said Deposit Agreement.

4. All bonds now held on deposit by this Committee and all bonds hereafter deposited with this Committee under said Cash Offer Plan shall, from

and after the filing of a certified copy of these resolutions with the depository with whom such bonds are respectively deposited, be deemed to have been deposited in escrow with such depository for the uses and purposes specified in said resolution of the Reconstruction Finance Corporation adopted November 14, 1934, and this Committee and the owners and holders of said bonds shall be deemed to have consented to the plan of refinancing contemplated by said resolution of the Reconstruction Finance Corporation and to all the terms and conditions of this Cash Offer Plan and none of said bonds shall be withdrawn, nor shall the consent of this Committee and the holders of said bonds to said plan of refinancing contemplated by the said resolution of the Reconstruction Finance Corporation be withdrawn or revoked prior to the termination date of said Cash Offer Plan hereinafter mentioned. Provided, however, that the owners or holders of any of said bonds heretofore deposited with this Committee under the terms of said Deposit Agreement prior to the adoption by this Committee of said Cash Offer Plan may withdraw their bonds within the period and upon the conditions hereinafter and in said Deposit Agreement set forth, and such withdrawing depositors shall not be deemed to have assented to said Cash Offer Plan or to the plan of refinancing contemplated by said resolution of the Reconstruction Finance Corporation. Any holder of bonds of said District heretofore deposited with this Committee who shall not, [680] within the time and in the manner in said

Deposit Agreement and hereinafter in this resolution provided, withdraw his bonds from deposit with this Committee shall be deemed to have assented to and to be irrevocably and conclusively bound by this Cash Offer Plan and the terms and conditions of said resolution of the Reconstruction Finance Corporation.

5. The Secretaries of this Committee be and are hereby authorized and directed to file with each of said depositories a certified copy of this resolution, together with a copy of said Cash Offer Plan and a notice in substantially the following form, to-wit:

“To.....

We hand you herewith certified copy of resolutions of the Bondholders' Protective Committee constituted under Merced Irrigation District Deposit Agreement dated March 1, 1932, together with Cash Offer Plan dated February 1, 1935, approved and adopted by said Committee under the terms of Article III of said Deposit Agreement.

You are hereby notified that the Committee has adopted said Cash Offer Plan in accordance with the terms of said Deposit Agreement and that all bonds now held by you on deposit under the terms of said Deposit Agreement are hereby subject to the terms and conditions of said Cash Offer Plan and to the plan of refinancing contemplated by the resolution of the Reconstruction Finance Corporation adopted November 14, 1934, referred to in said Cash

Offer Plan, subject only to the right of withdrawal within the period and subject to the conditions specified in said Deposit Agreement and paragraph 6 of said resolution of the Bondholders' Protective Committee.

You are further notified that in the event any depositors whose bonds are now held by you under the terms of said Deposit Agreement desire to withdraw therefrom you shall require, as a condition to the delivery of said bonds:

- (a) That there be paid to you to be held by you for the account of the Committee the sum of \$9.18 for each \$1000 bond so sought to be withdrawn;
- (b) The surrender to you of the certificates of deposit issued by you and representing such bonds properly endorsed in blank, the signature guaranteed to your satisfaction;
- (c) That such withdrawal be made on or before the 18th day of March, 1935, which is hereby fixed as the termination of the thirty (30) days period specified in Section 4 of Article III of said Deposit Agreement.

You will kindly notify the undersigned of the names and addresses of all withdrawing depositors.

Very truly yours,
MERCED IRRIGATION DISTRICT
BONDHOLDERS' PROTECTIVE
COMMITTEE

Constituted under Deposit Agreement. Dated March 1, 1932,
By WILLIAM COURTRIGHT
Secretary"

6. The sum of \$9.18 is hereby fixed as the pro rata amount of the costs and expenses chargeable to each \$1000 bond heretofore deposited [681] with this Committee (and proportionately in the case of bonds of a denomination of less than \$1000). Any holder of bonds which have been deposited with this Committee prior to the date of the adoption of this Cash Offer Plan, to-wit, prior to February 15, 1935, may withdraw from said Deposit Agreement within the period of thirty (30) days beginning on the date of the mailing of the notice accompanying said Cash Offer Plan hereinbefore specified, upon surrender of his certificate of deposit properly endorsed in blank to the depository which issued his certificate of deposit and upon paying to said depository for this Committee said sum of \$9.18 for each \$1000 bond, and thereupon such withdrawing depositor shall be entitled to the delivery of the bonds and coupons of the same issue and maturity date and of a principal amount equal to those represented by such certificate of deposit (less any interest coupons which have been detached and paid with respect to said bonds). Each of the depositories is hereby authorized and directed, within said period above specified, to deliver said bonds to any withdrawing depositor upon surrender of certificate of deposit properly endorsed and upon payment of his pro rata share of the expenses of the Committee herein prescribed. Depositors so withdrawing shall cease to have any rights under said

Deposit Agreement. Depositors who fail to withdraw in the manner prescribed in said Deposit Agreement shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal granted by such Deposit Agreement, and said Cash Offer Plan shall be binding upon all depositors who shall not have so withdrawn, all of whom shall be conclusively and finally deemed for all purposes to have assented to such Cash Offer Plan and the terms thereof, and shall be irrevocably bound by the same. All bondholders who shall deposit their bonds with any of the depositaries hereby appointed from and after the date of this resolution shall be deemed to have deposited their bonds under and pursuant and subject to the terms of said Cash Offer Plan and to have accepted said Cash Offer Plan and all of the terms and conditions thereof.

7. These resolutions may be adopted by writing signed by a majority of the members of said Committee or their proxy and each of such documents embodying said resolutions may be simultaneously executed in several counterparts, each of which shall, for all purposes, be deemed to [682] be the original and such counterparts, singly or together, shall constitute one and the same instrument; provided, that it shall not be necessary that all of the signatures of the members of the Committee, or a majority thereof, or their proxies, appear on any one document but each document whether signed by one or more of the members of said Committee,

shall be deemed to be an original counterpart; provided, further, that neither these resolutions nor any counterpart shall become effective unless a majority of the members of the Committee or their proxies, shall have actually signed one or more of said counterparts singly, and each such counterparts together may then constitute the action and determination of this Committee.

In Witness Whereof, the undersigned members of Merced Irrigation District Bondholders' Protective Committee constituting a majority thereof have adopted this resolution this 5th day of February, 1935.

FRED G. STEVENOT
ROBERT FULLERTON, JR.
ARCHIBALD BORLAND
GEO. E. CROTHERS
MARK C. ELWORTHY
VICTOR ETIENNE, JR.
M. VILAS HUBBARD
EARL W. HUNTLEY

As and constituting a majority of Merced Irrigation District Bondholders' Protective Committee.

Certified Correct:

WILLIAM COURTRIGHT [683]

RESPONDENTS' EXHIBIT No. T
PETITION FOR DEBT READJUSTMENT
(State Court)

This exhibit was a copy of a petition entitled in the matter of the petition of Merced Irrigation District, an Irrigation District, for Readjustment of Debts, in the Superior Court of the State of California in and for the County of Merced, being Action Number 11675 therein. The petition being verified by the President and Secretary of the Merced Irrigation District and signed by C. Ray Robinson, Hugh Landram, Stephen W. Downey, and Downey, Brand, & Seymour, as attorneys for the Merced Irrigation District, dated July 20, 1937.

This petition was entitled Petition for Debt Readjustment and was filed pursuant to California Statutes 1937, Chapter 24, and alleged as follows:

I.

Alleged that the petitioner is an irrigation district organized under California law.

II.

Alleged that the Merced Irrigation District is unable to pay its debts as they mature and desires to effect a plan of readjustment for its outstanding bonded indebtedness.

This paragraph then set forth the details of the first, second, and third bond issues of the district, together with a form of the bond (all as described in the petition for composition of debts in the instant proceedings).

This paragraph further alleged that the district has been continuously in default on all payments of principal and interest for a period of in excess of three years.

The remainder of the petition then read as follows:

III.

“That the Board of Directors of said Merced Irrigation District has heretofore adopted a plan for readjustment of said [684] bonded indebtedness which plan has been accepted in writing by the holders of over ninety per cent (90%) in principal amount of said bond indebtedness. That there are no bonds owned or held by said District. That said District desires to effect said plan and to avail itself of the relief and remedies provided for by the “Irrigation District Refinancing Act” (Stats. 1937, Chap. 24).

IV.

That said plan of readjustment is described as follows:

That outstanding bonds of said District in the total principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933 and subsequently thereto, be purchased by Reconstruction Finance Corporation by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. That such payment be made out of the sum of

Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100th Dollars (\$8,338,011.90) heretofore set aside for that purpose to Merced Irrigation District by the Reconstruction Finance Corporation, an agency of the United States of America. That after purchase of all of said bonds Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100th Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation to evidence said loan, or in exchange on the basis aforesaid for such of said outstanding bonds of petitioner as may be held or purchased by said Reconstruction Finance Corporation out of the proceeds of said loan, to the end that the District will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100th Dollars (\$8,338,011.90), bearing interest at the rate of four per cent (4%) per annum. [685]

The District therefore proposes and offers to pay in cash to the holders of its outstanding bonds a sum equal to 51.501 cents for each dollar of principal amount of said bonds upon delivery and transfer of such bond and all interest coupons and right to interest appurtenant thereto which matured July 1, 1933 and subsequently thereto.

V.

That on the 15th day of July, 1937, the Board of Directors of Merced Irrigation District, in proceedings to that end duly had and taken, adopted a resolution wherein and whereby said Board re-adopted and reaccepted said plan of readjustment of bonded indebtedness as aforesaid; that a certified copy of said resolution is filed and submitted with and attached to this petition, marked "Exhibit A" and by reference thereto made a part hereof.

VI.

That all steps necessary to be taken to make said plan of readjustment effective have been taken, and that heretofore the refunding bonds to be issued and delivered under the conditions aforesaid, have been duly authorized by said District. That said bonds will bear four per cent (4%) interest per annum, payable semi-annually.

VII.

That the Reconstruction Finance Corporation, Washington, D. C. owns over ninety per cent (90%) of the principal amount of said bond indebtedness of said District, to-wit, approximately Fourteen Million Six Hundred Forty Thousand Dollars (\$14,640,000.00) of the principal bond indebtedness of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) as aforesaid, and, as aforesaid, has in writing accepted said plan of readjustment. That a list of all other known holders of bonds of said District with their ad-

dresses so far as known to Merced Irrigation District, and a description of their respective claims so far as known to said [686] District, is hereto attached, marked "Exhibit B" and by reference thereto made a part hereof. That said exhibit has been compiled from the best sources of information available, including all books and records of said District, and is believed to be correct; but that transfers of bonds and coupons, either voluntarily or by operation of law, may have occurred, unknown to said District or through its books or records. That petitioner does not admit the authenticity of any purported bonds or coupons held by any of the holders so listed, nor does petitioner intend hereby to acknowledge any of said bonds or coupons so listed which are barred by the statute of limitations.

That said plan of readjustment is fair, equitable and for the best interests of the creditors of Merced Irrigation District who are affected thereby. That the offer of said plan of readjustment and its acceptance by over Ninety Per cent (90%) of its bondholders are in good faith and the District is authorized by law to take all action necessary to be taken to carry out said plan of readjustment.

VIII.

That the Board of Directors of Merced Irrigation District on the 13th day of July, 1937, presented said plan of readjustment to the California District Securities Commission and by order of said

commission in writing duly given and made on the 17th day of July, 1937, said Commission approved said plan of readjustment as being fair and equitable to the creditors affected thereby and for the best interests of Merced Irrigation District and the landowners thereof.

Wherefore, Petitioner prays:

1. That the Court, by order, set a time and place for the hearing of this petition and prescribe the notice of such hearing to be given;

2. That at such time and place the Court hold a hearing [687] upon said plan and after due proceedings had, enter an interlocutory judgment confirming said plan;

3. That, upon rendition of such interlocutory judgment the Court continue this proceeding for final hearing as to the value of the bonds of non-accepting holders, if any, and at such final hearing, after due proceedings had, the Court enter a judgment of acquisition, cancellation and condemnation by Petitioner of all bonds of non-accepting holders, if any, and that such proceedings be had in conformity with such judgment as may be prescribed thereby or by the Court;

4. And that petitioner have such other and further relief as may be meet and agreeable to equity.

Dated: July 20, 1937." [688]

RESPONDENTS' EXHIBIT "U"

was a resolution of the Merced Irrigation District adopting the plan of readjustment of bond indebtedness, adopted July 13, 1937, reading as follows:

[689]

RESOLUTION ADOPTING PLAN OF
READJUSTMENT OF BOND INDEBTEDNESS

Whereas, there are now issued and outstanding bonds of Merced Irrigation District totaling the sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) in principal amount; and

Whereas, said bond indebtedness and the interest thereon due as of July 1, 1933 and subsequently, is unpaid and in default; and

Whereas, said District is unable to pay said bond indebtedness or its debts as they mature unless said bond indebtedness is readjusted as hereinafter provided; and

Whereas, said District does not own any of the bonds or interest coupons appurtenant thereto constituting any of said bond indebtedness; and

Whereas, the plan of readjustment hereinafter referred to has heretofore been accepted in writing by the holders of over ninety per cent (90%) in principal amount of said bond indebtedness; and

Whereas, said plan of readjustment of bond indebtedness has heretofore been adopted by said District and it is now desired to re-affirm and re-adopt said plan of readjustment; and

Whereas, heretofore the Reconstruction Finance Corporation, an agency of the United States of America, Washington, D. C. has set aside certain funds for the purpose of assisting Merced Irrigation District to refinance its bonded indebtedness under the plan of readjustment hereafter described and said District has heretofore, after proceedings to that end duly had and taken, authorized the issuance and delivery of refunding bonds hereinafter referred to and necessary to carry out said plan of readjustment; and

Whereas, the terms and conditions governing the loan between the Reconstruction Finance Corporation and the Merced Irrigation District; the purchase of presently outstanding old bonds of Merced Irrigation District by the Reconstruction Finance Corporation; the exchange of old bonds purchased by the Reconstruction Finance Corporation for refunding bonds of the Merced Irrigation District; the terms and provisions of said refunding bonds and their issuance and payment by Merced Irrigation District, are set forth in the following resolutions and contracts, to-wit;

1. Resolution of Reconstruction Finance Corporation, dated November 14, 1934, awarding loan to Merced Irrigation District and setting forth the terms and conditions thereof, and certain resolutions of Reconstruction Finance Corporation amendatory thereof and supplemental thereto, all of which resolutions

were duly accepted by Merced Irrigation District;

2. Contract duly entered into by and between Reconstruction Finance Corporation and Merced Irrigation District, dated August 14, 1935;

3. Contract duly entered into between Merced Irrigation District and Reconstruction Finance Corporation, dated September 16, 1935; and [690]

Whereas, the plan of readjustment hereinafter referred to is designed and intended to effectuate the intent, purposes, objects and obligations of the foregoing resolutions and contracts;

Now, Therefore, Be It Resolved, that the following plan of readjustment of the bond indebtedness of said District be adopted, re-adopted, approved and confirmed as follows, to-wit;

That outstanding bonds of said District in the total principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933 and subsequently thereto, be purchased by Reconstruction Finance Corporation by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. That such payment be made out of the sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100th Dollars (\$8,338,011.90) hereto-

fore set aside for that purpose to Merced Irrigation District by the Reconstruction Finance Corporation, an agency of the United States of America. That after purchase of all of said bonds, Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation to evidence said loan, or in exchange on the basis aforesaid for such of said outstanding bonds of petitioner as may be held or purchased by said Reconstruction Finance Corporation out of the proceeds of said loan, to the end that the District will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90), bearing interest at the rate of four per cent (4%) per annum.

The District therefore proposes and offers to pay in cash to the holders of its outstanding bonds, a sum equal to 51.501 cents for each dollar of principal amount of said bonds upon delivery and transfer of such bond and all interest coupons and right to interest appurtenant thereto which matured July 1, 1933 and subsequently thereto.

Be It Further Resolved that the Secretary of the Board of Directors is authorized and directed to

present said plan of readjustment to the California District Securities Commission with a petition requesting the approval of said plan by said commission pursuant to the provisions of the Irrigation District Refinancing Act; and

Be It Further Resolved that if said plan is approved by said commission as being fair and equitable to the creditors affected thereby and for the best interests of the said District and the land-owners thereof, then Messrs. C. Ray Robinson, Hugh Landram, Stephen W. Downey and Downey, Brand & Seymour, attorneys for said District, are hereby instructed to file in the Superior Court of Merced County the verified petition pursuant to said Irrigation District Refinancing Act, praying that said plan be effected in accordance with said Act.

On motion of Director Wolf, seconded by Director Maze, the foregoing resolution was adopted by the following vote:

Ayes: President D. K. Barnell, W. H. Robinson, E. B. Maze, E. B. Wood, J. A. Wolf.

Noes: None.

Absent: None. [691]

I, H. P. Sargent, Secretary of the Merced Irrigation District, do hereby certify that the foregoing is a true and correct copy of a resolution adopted at a regular adjourned meeting of the Board of Directors of Merced Irrigation District held on the 13th day of July, 1937, by unanimous vote of said Board.

In Witness Whereof, I have hereunto affixed my hand and the seal of the said District, this 4th day of January, 1938.

[Seal] (Signed) H. P. SARGENT

Secretary

Merced Irrigation District [692]

RESPONDENTS' EXHIBIT "V"

was acceptance of plan of readjustment of indebtedness of Merced Irrigation District, as follows:
[693]

ACCEPTANCE OF PLAN OF READJUSTMENT OF INDEBTEDNESS OF MERCED IRRIGATION DISTRICT OF MERCED, CALIFORNIA.

Whereas, this Corporation has purchased and now holds bonds of the Merced Irrigation District in an amount exceeding 89% of the bonded indebtedness of such District; and

Whereas, said District desires to file a petition in the Superior Court of the State of California, in and for the County of Merced, under Chapter 24, Statutes of 1937, the same being Assembly Bill No. 2786, in order to effect a plan of readjustment of its outstanding indebtedness; and

Whereas, the Board of Directors of such District adopted a plan of readjustment of its outstanding indebtedness on the basis and including the terms and conditions as follows:

That outstanding bonds of said District in the total principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00), with all interest coupons appurtenant thereto and right to interest due on said bonds as of July 1, 1933, and subsequently thereto, be purchased by the payment in cash for each bond a sum equal to 51.501 cents for each dollar of principal amount thereof. That such payment be made out of the proceeds of a loan in the sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore awarded to Merced Irrigation District by the Reconstruction Finance Corporation, an agency of the United States of America. That Merced Irrigation District issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100 Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation to evidence said loan, or in exchange on the basis aforesaid for such of said outstanding bonds of petitioner as may be held or purchased by said Reconstruction Finance Corporation out of the proceeds of said loan, to the end that the District will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) to the principal sum of Eight

Million Three Hundred Thirty-eight Thousand Eleven and 90/100 Dollars (\$8,338,011.90), bearing interest at the rate of Four Per Cent (4%) per annum.

The District therefore proposes and offers to pay in cash to the holders of its outstanding bonds a sum equal to 51.501 cents for each dollar of principal amount of said bonds upon delivery and transfer to said District of such bond and all interest coupons and right to interest appurtenant thereto which matured July 1, 1933, and subsequently thereto;

and [694]

Whereas, such plan of readjustment appears to be fair, just and reasonable and adopted in good faith on the part of such District and has been approved by the Division Chief or Acting Chief of the Drainage, Levee and Irrigation Division and Counsel for this Corporation; and

Whereas, its adoption by Reconstruction Finance Corporation appears advisable.

Now, Therefore, by reason of the foregoing facts, and on the recommendation of the Division Chief or Acting Chief, such proposed plan of readjustment submitted by the Board of Directors of Merced Irrigation District be and hereby is approved and accepted by Reconstruction Finance Corporation with the understanding, however, that upon the confirmation of such plan the payment of any and all interest by such irrigation district due

Reconstruction Finance Corporation, on account of the bonds of such District held by Reconstruction Finance Corporation, in excess of interest at the rate of 4% per annum on the amount disbursed by it in acquiring such bonds, be and hereby is waived to the benefit of such District.

And Reconstruction Finance Corporation consents that such District may file its petition for readjustment of its indebtedness in the Superior Court of the State of California, in and for Merced County, as provided in Chapter 24, Statutes of 1937, the same being Assembly Bill No. 2786.

The Secretary or an Assistant Secretary of this Corporation is hereby authorized and directed to forward a certified copy of the foregoing acceptance to Messrs. Downey, Brand and Seymour, Capital National Bank Building, Sacramento, California, attorneys for the District.

* * * * *

I hereby certify that the above and foregoing is a true and correct copy of an acceptance by the Executive Committee of the Reconstruction Finance Corporation on the 9th day of July, 1937.

[Seal] (Signed) RONALD H. ALLEN

Assistant Secretary

Reconstruction Finance Corporation

[695]

RESPONDENTS' EXHIBIT "W"

NOTICE OF HEARING

This exhibit was a notice of hearing by Merced Irrigation District to the bondholders in the State Court proceeding, reading as follows:

In the Superior Court of the State of California,
in and for the County of Merced.

No. 11675

In the Matter of the Petition of Merced Irrigation District, an Irrigation District, for Readjustment of Debts.

NOTICE TO HOLDERS OF BONDS ISSUED
BY MERCED IRRIGATION DISTRICT OF
HEARING UNDER IRRIGATION DISTRICT
REFINANCING ACT.

Notice Is Hereby Given to all holders of bonds issued by Merced Irrigation District (hereinafter designated "Petitioner"), an irrigation district organized and existing under and by virtue of the laws of the State of California, as follows:

1. That said petitioner has filed in the Superior Court of the State of California, in and for the County of Merced, at Merced, California, a petition for approval of a plan to readjust all of its bonded indebtedness;

2. That said petition and plan have been submitted by petitioner under the Act of the Legislature of the State of California, known and desig-

nated as "Irrigation District Refinancing Act."

3. That a general statement of said plan is as follows:

That all outstanding bonds of said petitioner in the principal sum of Sixteen Million One Hundred Ninety Thousand Dollars (\$16,190,000.00) and all interest coupons appurtenant thereto and right to interest due thereon as of July 1, 1933 and subsequently thereto, be purchased by Reconstruction Finance Corporation by the payment in cash for each bond of a sum equal to 51.501 cents for each dollar of principal amount thereof. That such payment be made out of the sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) heretofore set aside for that purpose to petitioner by the Reconstruction Finance Corporation, an agency of the United States of America. That after purchase of all of said bonds, petitioner issue and deliver its refunding bonds in the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90) to said Reconstruction Finance Corporation to evidence said loan or in exchange, on the basis aforesaid, for such of said outstanding bonds of petitioner as may be held or purchased by said Reconstruction Finance Corporation out of the proceeds of said loan, to the end that petitioner will reduce its outstanding bond indebtedness from the principal sum of Sixteen Million One Hundred Ninety Thousand

Dollars (\$16,190,000.00) to the principal sum of Eight Million Three Hundred Thirty-eight Thousand Eleven and 90/100ths Dollars (\$8,338,011.90), bearing interest at the rate of four per cent (4%) per annum.

Petitioner therefore proposes and offers to pay in cash to the holders of its outstanding bonds a sum equal to 51.501 cents for each dollar of principal amount of said bonds upon delivery and transfer of such bond and all interest coupons and right to interest appurtenant thereto which matured July 1, 1933 and subsequently thereto.

4. That a written acceptance of said plan has been executed by the holders of more than ninety per cent in principal amount of said bonded indebtedness.

5. That said plan has been approved in writing by California Districts Securities Commission as being fair and equitable to the creditors affected thereby and for the best interest of petitioner and the landowners thereof.

6. For further particulars reference is made to said petition on file in this proceeding and to said Irrigation District Refinancing Act (Stats. 1937, Chapter 24).

7. That a hearing will be held before said Court on Wednesday the 15th day of December, 1937, at the hour of 10:00 o'clock A. M. at the Courtroom of Department 1 of said Court, in the Courthouse of Merced County, Merced, California, for the pur-

pose of considering said petition and said plan of readjustment and any changes, amendments or modifications thereof which may be proposed, and that at the hearing any creditor affected by the plan may appear and be heard in reference thereto as provided in the Irrigation District Refinancing Act (Stats. 1937, Chapter 24).

Dated: This 20th day of July, 1937.

MERCED IRRIGATION DISTRICT

By D. K. BARNELL

President of its Board of Directors,

and by

H. P. SARGENT,

Secretary

[Seal of Merced

Irrigation District]

C. RAY ROBINSON

HUGH LANDRAM

STEPHEN W. DOWNEY

DOWNEY, BRAND & SEYMOUR

Attorneys for

Merced Irrigation District. [696]

RESPONDENTS' EXHIBIT "X"

Annual Financial Statements.

These were annual financial statements of the district for the years 1931 to 1937. [697]

**ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1931.**

To the Board of Directors,
Merced Irrigation District:

Pursuant to and in accordance with Section 14A of the California Irrigation District Act, I submit herewith a statement of the financial condition of the Merced Irrigation District showing receipts and disbursements by Funds for the year 1931.

H. P. SARGENT,
Secretary.

E. E. NEEL,
Auditor.

Subscribed and sworn to before me this 20th day of January, 1932.

[Seal] GUSSIE BOYSON,
Notary Public in and for the State of California,
County of Merced.

EXHIBIT "A"

Statement of Income and Expenditures
for Year Ending Dec. 31, 1931

Receipts

Income (Sched. 1)

	Gen. Fund	Bond Fund	Total
Taxes, 1931-1932 (1st Installment)	129,170.03	277,216.73	406,386.76
Taxes, 1930-31	18,782.98	366,681.21	385,464.19
Taxes, 1920-30 (Delinquent)	24,276.17		24,276.17
Other Income	134,768.08		134,768.08
Total	306,997.26	643,897.94	950,895.20

Disbursements

Exp'd. (Sched. 2)			
Capital Exp'd. & Operation.....	329,132.51		329,132.51
Bond Interest & Retirements		950,631.74	950,631.74
Total	329,132.51	950,631.74	1,279,764.25

Fund Balances (Schedule 3)

Fund Balance for Year	* 22,135.25	*306,733.80	*328,869.05
Fund Balance Jan. 1, 1931	5,200.00	742,022.50	747,222.50
Transfer Bond to Gen. Fun.....	174,375.64	*174,375.64	
Fund Balances Dec. 31, 1931	\$157,440.39	260,913.06	418,353.45

* Red

§ Includes \$82,444.25 Frozen Deposit Farmers & Merchants Bank

Analysis of Income

EXHIBIT "A" SCHEDULE 1

Current Taxes

First Installment 1931-32.....	406,386.76	
Second Installment 1930-31.....	385,464.19	791,850.95
Delinquent Taxes 1925-26	185.38	
Delinquent Taxes 1926-27.....	1,032.81	
Delinquent Taxes 1927-28.....	5,044.47	
Delinquent Taxes 1928-29.....	2,847.00	
Delinquent Taxes 1929-30	15,166.51	24,276.17

Other Income

Interest on Tax Redemptions	7,015.82	
Water Tolls	2,203.80	
Real Estate Rentals.....	2,604.01	
Water Diversion Concession	500.00	
Sale of Electric Energy	95,917.21	
Inclusion New Acreage.....	3,180.00	
Interest on Bank Balances	5,861.94	
Tax Property Sales.....	6,509.90	
Sale of Lots (Merced Post Office Site)	10,975.40	134,768.08

Total Income		950,895.20
--------------------	--	------------

Analysis of Expenditures

EXHIBIT "A" SCHEDULE 2

Capital Expenditures

.....Building Improvements		5,014.67	
Canals, New Construction	2,959.92		
Canals, Betterments	66,071.59	69,031.51	
<hr/>			
Drainage Wells, New Construction	1,952.35		
Drainage Wells, Betterments	434.56	2,386.91	
<hr/>			
Drainage Ditches, Betterments.....		361.86	
Telephone Line Extensions		3,881.63	
Exchequer Dam & Camp Bet.....		283.27	80,959.85
<hr/>			

Maintenance & Operation

General Overhead

Board of Directors.....	5,978.47		
Legal Expenses	4,809.42		
Engineering	16,136.48		
Election Expense	600.11		
Executive Administration	5,500.00	33,024.48	
<hr/>			

Office Expenses

General Office	6,524.90		
Treasurer's Office	1,483.45		
Assessor-Collector Office	8,381.46	16,389.81	
<hr/>			

Refunds

Tax Refunds	1,389.54		
Pumping Plant Refunds.....	22,190.44		
Crocker-Huffman Con't. Pmts.	57,725.11	81,305.09	

Insurance, Damages, etc.

Industrial Insurance	2,327.65		
Casualty Insurances	6,881.93		
Fidelity Bonds	480.00		
Damage Payments	125.00	9,814.58	
<hr/>			

Irrigation Operations

Distribution of Water.....	40,856.27		
Maintenance & Repairs.....	38,699.63	79,555.90	
<hr/>			

Drainage Operations			
Operation of Wells	9,532.76		
Maintenance & Repairs.....	7,324.18	16,856.94	
		<hr/>	
Powerhouse Operation		17,378.54	
Deeded Tax Property Exp.....		249.15	
Drainage Contracts			
Interest	3,636.42		
District No. 1.....	2,250.00		
District No. 2.....	7,150.00		
Fruitland	600.00	13,636.42	
Interest on \$106,175.51 Reg. War.		628.20	268,839.11
		<hr/>	<hr/>
Total			349,798.96
Less-Stock Liquidation	10,104.76		
Equipment Depreciation	10,561.69		20,666.45
		<hr/>	<hr/>
Total General Fund.....			329,132.51
Bond Interest & Redemptions			
Interest District Bonds.....	949,147.50		
Interest Drainage Bonds.....	216.00		
Retirement Drainage Bonds.....	600.00	949,963.50	
Int. on \$33,467.50 Bond Int.			
Coupons		668.24	950,631.74
		<hr/>	<hr/>
Total Expenditures			1,279,764.25

Reconciliation with Treasurer

EXHIBIT "A" SCHEDULE 3

	Gen. Fund	Bond Fund	Total
Treasurer's Balance	163,627.77	216,915.41	380,543.18
Plus—			
Collector's Funds	19,227.55	43,997.65	63,225.20
	<hr/>	<hr/>	<hr/>
	182,855.32	260,913.06	443,768.38
Less—			
Outstanding Warrants	25,614.93		25,614.93
	<hr/>	<hr/>	<hr/>
	157,240.49	260,913.06	418,153.45
Plus—			
Auditor's Petty Cash	200.00		200.00
	<hr/>	<hr/>	<hr/>
Fund Balances Dec. 31, 1931.....	157,440.49	260,913.06	418,353.45

TO THE BOARD OF DIRECTORS,
MERCED IRRIGATION DISTRICT:

Pursuant to and in accordance with Section 14A of the California Irrigation District Act. I submit herewith a statement of the financial condition of the Merced Irrigation District showing receipts and disbursements by Funds for the year 1931.

E. E. NEEL,
Auditor

H. P. SARGENT,
Secretary

Subscribed and sworn to before me this 27th day of January, 1932.
(Seal) GUSSIE BOYSEN

Notary Public in and for the State of
California, County of Merced.

No. 16, Feb. 6, 13.

COMMENTS ON FINANCIAL STATEMENT
Tax Collections

Unusual heavy delinquency appeared in the collection of 1930-31 tax in June amounting to 17.63% or \$210,596.89 not paid; and in collection of 1931-32 tax 1st installment (60%) payable on December 1931, 38.3% or sum of \$246,379.30 was not paid.

Condition of Funds

Revenue from sale of Hydro-electric energy was only \$95,917.21 and with heavy losses in the two main sources of revenue, the expenditures for the calendar year were greater than the income to the extent of \$22,135.25 in General Fund and \$306,733.80 in Bond Fund.

Registered Warrants

It was necessary to issue registered warrants against the General Fund for operation purposes in the sum of \$106,175.51. Payment of Bond Interest in July was made from Bond Fund to all bond holders except coupons in the amount of \$33,467.50 which were registered. The 1931-32 tax levy provided for payment of these outstanding registered warrants and bond interest coupons and they have been paid from tax money received.

Bond Interest Coupons

There came into the Bond Fund from 1st installment of 1931-1932 taxes the sum of \$260,913.06 for payment of January 1, 1932 Bond Interest Coupons in amount of \$474,573. There not being sufficient money on hand to pay coupons presented, the Treasurer at present has not determined how the money will be dispersed.

Further information concerning the district will be furnished upon request.

H. P. SARGENT,
Secretary.

MERCED IRRIGATION DISTRICT STATISTICS

As of December 1, 1931.

Gross Area, Acres.....	190,025
Bonded Indebtedness	\$16,250,000
Irrigable Acres	170,000
Acres Irrigated 1931 Gravity.....	123,520
Acres Irrigated (Private Pumping Plants).....	9,000

Note: Approximately 10,000 additional acres have been developed and received gravity water each year up to 1931.

Miles of Canals and Laterals.....	1,200
Miles Concrete Lined Canals.....	50
Miles Drainage Ditches.....	75
Drainage Pumps and Wells.....	84
Storage Capacity Exchequer Reservoir (Lake McClure).....	289,000 acre feet
Source of Supply.....	Merced River
Hydro Electric Power Plant at Exchequer.....	
.....	25,000 K. W.
Assessed Valuation 1931-32.....	\$19,159,570
Tax Rate 1930-31	
.....	\$5.60 per \$100 of Assessed Valuation
Average Size of Farms.....	60 Acres
Cities and Towns: Merced (Gateway to Yosemite), Atwater, Livingston, Winston, Cressey, Tuttle, Planada and Le Grand.	
Population of District.....	23,000

Transportation: Main line Southern Pacific R. R.,
Oakdale branch S. P. R. R. Atchison, Topeka &
Santa Fe R. R., Yosemite Valley R. R., Golden
State Highway, Yosemite Highway, Pacheco
Pass Highway to Yosemite Valley. [698]

ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1932.

To the Board of Directors,
Merced Irrigation District:

Pursuant to and in accordance with Section 14A
of the California Irrigation District Act, I submit
herewith a statement of the financial condition of
the Merced Irrigation District showing receipts and
disbursements by Funds for the year 1932.

H. P. SARGENT,
Secretary.

E. E. NEEL,
Auditor.

Subscribed and sworn to before me this 17th day
of January, 1933.

[Seal] GUSSIE BOYSON,
Notary Public in and for the State of California,
County of Merced.

EXHIBIT "A"

Statement of Income and Expenditures

For Year Ending Dec. 31, 1932

Receipts

Income (Schedule 1)	General Fund	Bond Interest Fund	Bond Principal Fund	Total
Taxes, 1932-33 (1st Installment)		237,917.72	13,776.21	251,693.93
Taxes, 1931-32	92,008.56	190,580.02		282,588.58
Taxes, 1920-31 (Delinquent)	33,316.66			33,316.66
Other Income	219,234.39	437,782.50		657,016.89
Total	344,559.61	866,280.24	13,776.21	1,224,616.06

Disbursements

Expenditures (Schedule 2)			
Capital Expended and Operation	383,912.96		383,912.96
Bond Interest		951,812.59	951,812.59
Total	383,912.96	951,812.59	1,335,725.55

Fund Balances (Schedule 3)

Fund Balances for			
Year	* 39,353.35	* 85,532.35	*111,109.49
Fund Balances Dec. 31, 1931	157,440.39	260,913.06	418,353.45
Fund Balances Dec. 31, 1932	°118,087.04	175,380.71	13,776.21
			307,243.96

*Red.

°Includes \$82,444.25 Frozen Deposit F. & M. Bank.

EXHIBIT "A" SCHEDULE 1

Analysis of Income

Current Taxes

First Installment 1932-33.....	251,693.93	
Second Installment 1931-32.....	282,588.58	534,282.51
<hr/>		
Delinquent Taxes 1925-26.....		
Delinquent Taxes 1926-27.....	198.63	
Delinquent Taxes 1927-28.....		
Delinquent Taxes 1928-29.....	12,422.74	
Delinquent Taxes 1929-30.....	1,684.53	
Delinquent Taxes 1930-31.....	19,010.76	33,316.66
<hr/>		

Other Incomes

Interest on Redemptions	10,511.21	
Water Tolls	14,363.58	
Real Estate Rentals	7,495.88	
Water Diversion Concession	500.00	
Sale of Electric Energy	605,630.18	
Interest on Bank Balances.....	3,794.31	
Tax Property Sales	3,112.68	
Treasurer's Bond Settlement F. & M Bank	12,000.00	
Misc. Equipment Rentals, etc.....	1,226.28	

658,634.12

Less Adjustment 1931 Inclusion

Fee	1,617.23	657,016.89
<hr/>		

Total Income 1,224,616.06

EXHIBIT "A" SCHEDULE 2**Analysis of Expenditures****Capital Expenditures**

Building Improvements	192.39	
Canals, Betterments	8,242.49	
Telephone Lines—Extensions	84.80	
Upper Project—Betterments	327.73	8,847.41

Maintenance and Operation—**General Overhead:**

Board of Directors.....	4,269.54	
Legal Expense	12,466.04	
Engineering & Superintendence	10,690.19	
Executive Administration	5,500.00	32,925.77
Refinancing Expense		15,895.67

Office Expenses

General Office	5,666.40	
Treasurer's Office	1,423.69	
Assessor-Collector Office	8,595.06	15,685.15

Refunds

Tax Refunds	553.69	
Crocker-Huffman Cont.		
Payments	57,178.37	
Pumping Plant Refunds.....	12,998.26	70,730.32

Insurance, Damages, etc.

Industrial Insurance	1,525.82	
Casualty	6,821.64	
Fidelity Bonds	460.00	
Damages	820.00	
Interest Registered Warrants.....	1,000.49	10,627.95

Irrigation Operations

Distribution of Water.....	61,677.90	
Maintenance & Repairs.....	51,815.98	113,493.88

Drainage Operations

Operation of Drainage Wells	66,653.42		
Maintenance & Repairs Canals & Structures	1,325.02	67,978.44	
Powerhouse Operations		20,947.49	
Deeded Tax Property Expense.....		78.19	
Drainage Contracts, Interest.....		180.00	
Accounts Payable (1931 Items paid 1932)		37,073.37	385,616.23
Total			394,463.64
Less—Stock Liquidation		687.04	
Depreciation on Equipment.....		9,863.64	10,550.68
Total General Fund			383,912.96
Bond Interest			
Bond Interest Coupons.....		946,170.00	
Interest on Registered Coupons		5,642.59	951,812.59
Total Expenditures			1,335,725.55

EXHIBIT "A" SCHEDULE 3

Reconciliation with Treasurer

	<u>General Fund</u>	<u>Bond Int. Fund</u>	<u>Bond Prin. Fund</u>	<u>Total</u>
Treasurer's Balance Dec.				
31, 1932	128,730.27	165,673.64	13,776.21	307,738.83
Plus—				
Collector's Funds	143.57	9,607.07	541.29	10,291.93
Total.....	128,873.84	175,280.71	13,234.92	318,030.76
Less—				
Outstanding Warrants.....	10,986.80			10,986.80
	117,887.04	175,280.71	13,234.92	307,043.96
Plus—				
Auditor's Petty Cash.....	200.00			200.00
Fund Balances Dec. 31,				
1932	118,087.04	175,280.71	13,234.92	307,243.96

To the Board of Directors,
Merced Irrigation District:

Pursuant to and in accordance with Section 14A of the California Irrigation District Act, I submit herewith a statement of the financial condition of the Merced Irrigation District showing receipts and disbursements by Funds for the year 1932.

E. E. NEEL,

Auditor.

H. P. SARGENT,

Secretary.

Subscribed and sworn to before me this 17th day of January, 1933.

[Seal]

GUSSIE BOYSEN,

Notary Public in and for the State of California,
County of Merced.

COMMENTS ON FINANCIAL STATEMENT

Tax Collections

Last year with an assessment roll of \$19,159,570 and a tax rate of \$5.60 per \$100 valuation and total levy of \$1,071,567.84 there was unpaid the sum of \$361,899.43 or a delinquency of 33.7%.

The 1932 assessment roll after revaluation of the District by the Assessor was \$12,873,880 and with outstanding bond interest obligation and fixed charges it was necessary to fix a legal tax levy of \$8.90 per \$100 valuation in the amount of \$1,148,483.04. Of this sum there was due on 1st installment

\$689,189.03 and of said sum \$244,411.95 was paid leaving a delinquency of 64.6%.

Bond Fund

On December 31, 1932 there was outstanding unpaid Bond Interest coupons in amount of \$20,065. On January 1, 1933 there became due \$477,200 additional interest coupons making total bond interest coupons due of \$497,265. In the Bond Interest Fund to meet this obligation was the sum of \$175,-380.71 making a total default in payment of Bond Interest of \$321,884.29.

On January 1, 1933 bonds of the District became due in the sum of \$60,000. To meet this obligation there was in the Bond Principal Fund \$13,500, leaving a default in payment of bond principal in the sum of \$46,500.

Refinancing

During the year 1931 efforts to reach an agreement on a refinancing plan having failed, early in the year 1932 a Citizens Advisory Committee of 27 members was organized to assist the Board of Directors in refinancing and on May 19, 1932 the Board of Directors after receiving recommendations from the Advisory Committee, appointed Mr. Max Thelen of San Francisco, an attorney of outstanding ability and well qualified for this work, as Negotiator to represent the District in its refinancing operations.

Shortly after his appointment Mr. Thelen arranged for an Economic Survey and Appraisal of the lands of the District to obtain the facts in so

far as possible "of the ability of the Lands to pay" to be used as the basis of a refinancing plan. This survey and appraisal has been conducted with a representative of the bondholders committee as observer, and will be released shortly by the University of California, College of Agriculture, Division of Agricultural Economics, which has been conducting the survey.

After the report is received and studied by the Negotiator, Board of Directors and Fact Finding Committee, a plan for refinancing based on the findings of said report will be presented to the bondholders for their approval. It is expected that this will be accomplished by the latter part of February.

Further information concerning the District will be furnished upon request.

H. P. SARGENT, Secretary.

MERCED IRRIGATION DISTRICT STATISTICS

As of December 31, 1932

Gross Area, Acres.....	190,125
Bonded Indebtedness	\$16,250,000
Irrigable Acres	170,000
Acres Irrigated 1932 Gravity.....	120,652
Acres Irrigated (Private Pumping Plants).....	9,000

Note: Approximately 10,000 additional acres have been developed and received gravity water each year up to 1931.

Miles of Canals and Laterals.....	1,200
Miles Concrete Lined Canals.....	50
Miles Drainage Ditches.....	75
Drainage Pumps and Wells.....	84
Storage Capacity Exchequer Reservoir (Lake McClure)	289,000 acre feet
Source of Supply.....	Merced River
Hydro Electric Power Plant at Exchequer	25,000 K. W.
Assessed Valuation 1932-33.....	\$12,873,880
Tax Rate 1932-33	\$8.90 per \$100 of Assessed Valuation
Average Size of Farms.....	60 Acres
Cities and Towns: Merced (Gateway to Yosemite), Atwater, Livingston, Winton, Cressey, Tuttle, Planada and Le Grand.	
Population of District.....	20,000
Transportation: Main line Southern Pacific R. R., Oakdale branch S. P. R. R., Atchison, Topeka & Santa Fe R. R., Yosemite Valley R. R., Golden State Highway, Yosemite Highway, Pacheco Pass Highway to Yosemite Valley.	

ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1933.

To the Board of Directors
Merced Irrigation District:

Pursuant to and in accordance with Section 14A
of the California Irrigation District Act, I submit
herewith a statement of the financial condition of
the Merced Irrigation District showing receipts and
disbursements by Funds for the year 1933.

H. P. SARGENT,
Secretary.

E. E. NEEL,
Auditor.

Subscribed and sworn to before me this 6th day
of February, 1934.

[Seal] GUSSIE BOYSEN,
Notary Public in and for the State of California,
County of Merced. [700]

EXHIBIT "A"

STATEMENT OF INCOME & EXPENDITURES

For Year Ending Dec. 31, 1933

Receipts

Income (Schedule 1)

	General Fund	Bond Int. Fund	Bond Prin. Fund	Total
Taxes, 1933-34 (1st Inst.)	54,393.32			54,393.32
" 1932-33	3,376.84		13,604.54	251,933.98
" 1920-32 (Delin.)	30,604.30			30,604.30
Other Income	344,513.79	8,782.79	566.66	353,863.24
Total	432,888.25	243,735.39	14,171.20	690,794.84

Less Disbursements

Expenditures (Schedule 2)

Capital Expenditures—and operation	425,275.79			425,275.79
Bond Interest		364,665.85		364,665.85
Bond Retirements			24,916.70	24,916.70
Total	425,275.79	364,665.85	24,916.70	814,858.34

Fund Balances (Schedule 3)

Fund Balances for year	7,612.46		10,745.50	124,063.50
Fund Balances Dec. 31, 1932	118,087.04	175,380.71	13,776.21	307,243.96
Fund Balances Dec. 31, 1933	*125,699.50	54,450.25	3,030.71	183,180.46

o Red

* Includes \$76,448.30 Frozen Deposit F & M Bank.

EXHIBIT "A"—SCHEDULE 1

ANALYSIS OF INCOME

Current Taxes

First Installment 1933-34.....	54,393.32	
Second " 1932-33.....	251,933.98	306,327.30

Delinquent Taxes 1928-29.....	25.25	
" " 1929-30	576.98	
" " 1930-31	2,727.47	
" " 1931-32	21,637.37	

Partial Redemptions under Senate

Bill #65	5,637.23	30,604.30
Interest on Redemptions.....	7,125.84	
Water Tolls	10,341.50	
Real Estate Rentals.....	16,943.64	
Sale of Electric Energy.....	316,924.89	
Interest on Bank Balances.....	1,197.47	
Tax Property Sales.....	89.40	
Equipment Rentals	1,240.50	353,863.24

Total Income.....		690,794.84
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[702]

EXHIBIT "A"—SCHEDULE 2

ANALYSIS OF EXPENDITURES

Capital Expenditures

Materials	4,105.02	
Equipment	3,913.54	8,018.56
<hr/>		
Booster Plants—Bet.		1,515.57
Canal Extensions—New	1,063.34	
" Additions	13,224.30	14,287.64
<hr/>		
Drainage Wells—Bet.		5,053.22
Drainage Canals—New		335.38
Upper Project—Bet.		3,482.05
		<hr/>
		32,692.42

Maintenance & Operation

General Overhead

Board of Directors	4,406.26	
Legal Expense	4,218.66	
Engineering & Supt.	10,726.43	19,351.35
<hr/>		

Election Expense		987.49
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Office

General Office	11,190.72	
Treasurer's "	1,522.40	
Assessor—Col. office	10,138.25	22,851.37
<hr/>		

Refinancing Expense		37,019.40
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Special Survey (Economic)		1,635.19
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Refunds & Insurance

Tax Refunds	279.26	
Pumping Plant Refunds	6,445.27	
Compensation Insurance	3,047.37	
Casualty "	6,559.80	
Fidelity Bonds—Emp.	434.63	
Damage Payments	1,315.00	18,081.83
<hr/>		

Irrigation Operations

Distribution of Water	63,381.49	
Maintenance & Repair	55,199.89	118,581.38
<hr/>		

[703]

Drainage Operations

Operation of Drain Wells.....	75,106.00	
M & R Canals & Stets.....	1,969.15	77,075.15

Powerhouse Operation		19,221.40
CrockerHuffman Con't. Pmts.....		57,374.72
Deeded Tax Prop. Expense.....		293.04

Drainage Contracts

Interest	5,618.49	
Principal	20,000.00	25,618.49

Total Capital & Operation.....		430,783.23
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Less—Depreciation on

Equipment	9,150.90	
Accounts Receivable	(3,643.46)	5,507.44

Total General Fund.....		\$425,275.79
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Bond Interest Fund

Bond Interest Coupons.....	357,305.00	
Interest on Registered Coupons	7,360.85	364,665.85

Bond Principal Fund

Bond Retirements	24,500.00	
Interest on Registered Bonds..	416.70	24,916.70

Total Expenditures		\$814,858.34
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[704]

EXHIBIT "A"—SCHEDULE 3
RECONCILIATION WITH TREASURER

	General Fund	Bond Int. Fund	Bond Prin. Fund	Total
Treasurer's Balance Dec. 31, 1933.....	177,644.07	50,596.33	2,807.56	231,047.96
Plus—Collector's Funds	10,511.76	3,853.92	223.15	14,588.83
Total	188,155.83	54,450.25	3,030.71	245,636.79
Less—Outstanding Warrants	67,656.33			67,656.33
Plus—Auditor's Fund Payroll a/c.....	120,499.50	54,450.25	3,030.71	177,980.46
" Petty Cash	5,000.00			5,000.00
"	200.00			200.00
Fund Balances Dec. 31, 1933.....	125,699.50	54,450.25	3,030.71	183,180.46

[705]

MERCED IRRIGATION DISTRICT STATISTICS

As of December 31, 1933

Gross Area, Acres.....	190,125
Bonded Indebtedness	\$16,225,000
Irrigable Acres	170,000
Acres Irrigated 1933 Gravity.....	116,000
Acres Irrigated (Private Pumping Plants)	9,000
Miles of Canals and Laterals.....	1,200
Miles Concrete Lined Canals.....	50
Miles Drainage Ditches.....	75
Drainage Pumps and Wells.....	84
Storage Capacity Exchequer Reservoir (Lake McClure)	289,000 acre feet
Source of Supply.....	Merced River
Hydro Electric Power Plant at Exchequer	25,000 K. W.
Assessed Valuation 1932-33.....	12,292,410
Tax Rate 1933-34.....	\$1.00 per \$100 of Assessed Valuation
Average Size of Farms.....	60 Acres
Cities and Towns: Merced (Gateway to Yosemite), Atwater, Livingston, Winton, Cressey, Tuttle, Planada and Le Grand.	

Population of District.....	20,000
Transportation: Main line Southern Pacific R. R., Oakdale branch S. P. R. R., Atchison, Topeka & Santa Fe R. R., Yosemite Valley R. R., Golden State Highway, Yosemite Highway, Pacheco Pass Highway to Yosemite Valley. [706]	

ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1934.

To the Board of Directors Merced Irrigation Dis-
trict:

Pursuant to and in accordance with Section 14A
of the California Irrigation District Act, I submit
herewith a statement of the financial condition of
the Merced Irrigation District showing receipts and
disbursements by Funds for the year 1934.

H. P. SARGENT,

Secretary.

E. E. NEEL,

Auditor.

Subscribed and sworn to before me this 30th day
of March, 1935.

[Seal] P. BERTAINA,

Notary Public in and for the State of California,
County of Merced.

EXHIBIT "A"

Statement of Income and Expenditures for Year Ending Dec. 31, 1934

Receipts

Income (Schedule 1)—

	General Fund	Bond Interest Fund	Bond Principal Fund	Total
Taxes, 1934-35 (First Installment).....	\$102,729.66			\$102,729.66
Taxes, 1933-34	33,225.71			33,225.71
Taxes, 1932-33 (Delinquent).....	50,484.41			162,191.38
Taxes, 1920-32 (Delinquent).....	128,541.90			128,541.90
Other Income	251,836.31	294.16	60.04	252,190.51
Total	566,817.99	77,058.12	35,003.05	678,879.16

Less Disbursements

Expenditures (Schedule 2)—

Capital Expenditures and Operation.....	\$353,430.94			\$353,430.94
Bond Interest.....		125,526.32		125,526.32
Bond Retirements.....			36,788.75	36,788.75
Total.....	353,430.94	125,526.32	36,788.75	515,746.01

Fund Balances

Fund Balances (Schedule 3)—				
Fund Balances for Year.....	\$213,387.05			\$163,133.15
Fund Balances Dec. 31, 1933.....	125,639.50			183,180.46
Fund Balances Dec. 31, 1934.....	**339,086.55	5,982.05	1,245.01	346,313.61

*Red.

**Includes \$76,448.30 Frozen Deposit F. & M. Bank.

EXHIBIT "A"—SCHEDULE 1

ANALYSIS OF INCOME

Taxes—

Second Installment 1933-34.....	\$ 33,225.71	
First Installment 1934-35.....	102,729.66	135,955.37
<hr/>		
Delinquent Taxes 1928-29.....	71.77	
Delinquent Taxes 1929-30.....	1,788.39	
Delinquent Taxes 1930-31.....	22,609.05	
Delinquent Taxes 1931-32.....	71,591.68	
Delinquent Taxes 1932-33.....	162,191.38	
Partial Redemptions under Senate Bills Nos. 65 and 3.....	32,481.01	290,733.28
<hr/>		

Other Income—

Interest on Tax Redemptions.....	40,415.56	
Water Tolls	1,048.93	
Real Estate Rentals.....	14,608.84	
Sale of Electric Energy.....	191,936.39	
Interest on Bank Balances.....	2,344.72	
Tax Property Sales.....	1,056.60	
Misc. Equipment Rentals.....	779.47	252,190.51
		678,879.16
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EXHIBIT "A"—SCHEDULE 2

ANALYSIS OF EXPENDITURES

Capital Expenditures—

Materials and Equipment.....	\$ 4,613.22	
Land and Buildings.....	1,325.19	
Canal Extensions.....	782.38	
Canal Betterments.....	11,270.36	12,052.74
<hr/>		
Drainage Well Betterments.....	8,245.02	
Upper Project Betterments.....	14,697.31	\$40,933.48
<hr/>		

Maintenance and Operation—

General Overhead—

Board of Directors.....	2,942.59	
Legal Expense	3,116.08	
Engineering and Superintendent.....	10,523.20	16,581.87
<hr/>		

Office—

General Office	12,061.53	
Treasurer's Office	1,231.50	
Assessor-Collector Office	7,945.65	21,238.68

Refinancing Expense		32,370.45
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Refunds and Insurance—

Tax Refunds	30.01	
Pumping Plant Refunds	4,339.37	
Compensation Insurance	2,334.99	
Casualty Insurance	1,442.06	
Fidelity Bonds—Emp.	440.00	
Damage Payments	111.00	8,697.43

Irrigation Operations—

Distribution of Water	54,833.75	
Maintenance and Repairs	52,619.73	107,453.48

Drainage Operations—

Operation of Drain Wells	58,698.82	
M. & O. Drain Canals and Struct.	6,139.04	64,837.86

Powerhouse Operation	15,988.69	
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Crocker-Huffman Contract Payments ..	39,741.81	
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Deeded Tax Property Expense	1,910.38	
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Drainage Contracts—

Interest	2,018.03	
Principal	9,400.00	11,418.03 320,238.68

Total Capital and Operation		361,172.16
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Less Depreciation on Equipment	7,860.77	
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Accounts Receivable	*119.55	7,741.22
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Total General Fund		353,430.94
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Bond Interest Fund—

Bond Interest Coupons	116,350.00	
Interest on Registered Coupons	9,176.32	125,526.32

Bond Principal Fund—

Bond Retirements	34,500.00	
Interest on Registered Bonds	2,288.75	36,788.75

Total Expenditures		515,746.01
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*Red.

EXHIBIT "A"—SCHEDULE 3
RECONCILIATION WITH TREASURER

	General Fund	Bond Interest Fund	Bond Principal Fund	Total
Treasurer's Balance Dec. 31, 1934.....	\$354,266.04	\$5,982.05	\$1,245.01	\$361,493.10
Less—Outstanding Warrants.....	20,379.49			20,379.49
Total.....	333,886.55	5,982.05	1,245.01	341,113.61
Plus—Auditor's Fund Payroll Account.....	5,000.00			5,000.00
Auditor's Petty Cash Account.....	200.00			200.00
Fund Balances Dec. 31, 1934.....	339,086.55	5,982.05	1,245.01	346,313.61
				[707]

COMMENTS OF FINANCIAL STATEMENT

General Fund:

Fund balance of \$339,086.55 includes \$76,448.30 frozen deposit in defunct Farmers & Merchants National Bank and the further sum of \$102,729.66 collected on first installment of the 1934-35 tax which must be applied to operating expenses for 1935 year leaving a fund balance of \$259,908.59 for the 1934 calendar year. Practically all of this money, however, must be used for urgent maintenance work or betterments that should have been completed last year but which were deferred because of the anticipated shortage in the power revenue. The estimated budget requirements in this respect for 1934 were estimated at \$510,000, whereas the amount expended for operation and maintenance was \$353,430, and the difference must be made up out of the fund balance above noted.

In explanation of the failure to expend the necessary money for maintenance in 1934, it should be pointed out that the early snow and water survey showed prospects of a serious shortage affecting power revenue and the necessary work on the Irrigation District canal system was not completed on account of lack of funds before water was placed in the system. Power revenue for the year 1934 amounted to \$191,936 and delinquencies on the emergency tax rate of \$1.00 per \$100 valuation was 31%, and up to July strictest economy of operation was necessary. Certain relief legislation pertaining

to delinquent taxes and other relief measures causing readjustment in mortgages brought in delinquent tax revenue that was not anticipated, and with the short water year, reduced cost of operation and drainage resulted, with the result that the District had the Fund Balance above noted, which, however, must be applied to budgetary requirements for 1934 as noted above.

Bond Interest Fund:

Under the emergency tax of \$1.00 per \$100 valuation which was 31% delinquent, no funds were provided for bond service. However, the District was able to pay from revenues received from delinquent taxes January 1, 1933, interest coupons in the amount of \$116,350 plus \$9,176.32 interest on said coupons.

At the present time the District is in default in the payment of bond interest coupons as follows:

Jan. 1, 1935 and prior thereto	\$ 21,735.00
July 1, 1933	475,400.00
Jan. 1, 1934	475,400.00
July 1, 1934	473,510.00
Jan. 1, 1935	473,510.00
<hr/>	
Total Interest Due	1,919,555.00
Additional Bond Interest	
Due July 1, 1935	471,500.00
<hr/>	
Total	*2,391,055.00
*Plus 7% on all registered coupons.	
Cash on Hand in Bond Interest Fund	5,982.05

Bond Principal Fund:

Bonds Due Jan. 1, 1934	63,000.00
Bonds Due Jan. 1, 1935	67,000.00

Total Due *130,000.00

*Plus interest at 7% when registered.

Cash on Hand in Bond Principal Fund 1,245.01

Refinancing:

On November 14, 1934, the Reconstruction Finance Corporation after a government appraisal of the District authorized a loan in the sum of \$8,352,785 for purposes of refinancing the District's outstanding bond obligations. This amount is sufficient to pay \$515.01 for each \$1000.00 bond.

The Merced Irrigation District Bondholders' Protective Committee, on January 7, 1935, placed the proposal before the bondholders in the form of a questionnaire and received the following replies:

Number of Questionnaires Returned	Amount
658—In favor of R. F. C. Cash Offer representing	\$10,431,000
141—In favor of Refunding Plan	1,575,000
58—No preference	590,000

The Committee after the heavy vote cast in favor of the Cash Plan, did February 5, 1935, adopt the Cash Plan, at that time having on deposit approximately 59% of the bonds.

Since that time additional deposits have been received, and there is now on deposit about 70% of the bonds.

Further information concerning the district will be furnished upon request.

H. P. SARGENT,

Secretary.

MERCED IRRIGATION DISTRICT STATISTICS

As of December 31, 1934

Gross Area, Acres	190,125
Bonded Indebtedness	\$16,190,000
Irrigable Acres	170,000
Acres Irrigated 1934 Gravity	110,000
Acres Irrigated (Private Pumping Plants)	9,000
Miles of Canals and Laterals	1,200
Miles Concrete Lined Canals	50
Miles Drainage Ditches	75
Drainage Pumps and Wells	84
Storage Capacity Exchequer Reservoir (Lake McClure)	289,000 acre-feet
Source of Supply	Merced River
Hydro Electric Power Plant at Exchequer	25,000 K. W.
Assessed Valuation 1934-35	\$12,158,405
Tax Rate 1934-35 (Emergency Rate), \$1.70 per \$100 of Assessed Valuation.	
Average Size of Farms	60 Acres

Cities and Towns: Merced (Gateway to Yosemite),
Atwater, Livingston, Winton, Cressey, Tuttle,
Planada and Le Grand.

Population of District 20,000

Transportation: Main line Southern Pacific R. R.,
Oakdale branch S. P. R. R., Atchison, Topeka
& Santa Fe R. R., Yosemite Valley R. R.,
Golden State Highway, Yosemite Highway,
Pacheco Pass Highway to Yosemite Valley.

ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1935.

To the Board of Directors Merced Irrigation Dis-
trict:

Pursuant to and in accordance with Section 14a
of the California Irrigation District Act, I submit
herewith a statement of the financial condition of
the Merced Irrigation District showing receipts and
disbursements by funds for the year 1935.

H. P. SARGENT,

Secretary.

E. E. NEEL,

Auditor.

Subscribed and sworn to before me this 18th day
of February, 1936.

[Seal] P. BERTAINA,

Notary Public in and for the County of Merced,
State of California.

EXHIBIT "A"
STATEMENT OF INCOME AND EXPENDITURES
FOR YEAR ENDING DECEMBER 31, 1935
RECEIPTS
(Schedule 1)

	<u>General Fund</u>	<u>Operating Reserve Fund</u>	<u>Refunding Reserve Fund</u>	<u>Bond Interest Fund</u>	<u>Bond Principal Fund</u>	<u>Total</u>
Taxes, 1935-36 (1st Inst.)	\$ 187,876.63					\$ 187,876.63
Taxes, 1934-35	74,567.94					74,567.94
Taxes, 1920-33 (Delinquent)	142,110.50					142,110.50
Other Income	632,409.52			48.32	12.16	632,470.00
Totals Current	<u>1,036,964.59</u>			<u>48.32</u>	<u>12.16</u>	<u>1,037,025.07</u>
Transfers—From General Fund		180,000.00	92,200.00			272,200.00
Totals	<u>1,036,964.59</u>	<u>180,000.00</u>	<u>92,200.00</u>	<u>48.32</u>	<u>12.16</u>	<u>1,309,225.07</u>

LESS DISBURSEMENTS

(Schedule 2)

	General Fund	Operating Reserve Fund	Refunding Reserve Fund	Bond Interest Fund	Bond Principal Fund	Total
General Fund.....	794,323.95					794,323.95
Bond Interest Fund.....				4,612.31		4,612.31
Total Current.....	794,323.95			4,612.31		798,936.26
Transfers—To Operating Reserve	180,000.00					180,000.00
To Refunding Reserve.....	92,200.00					92,200.00
Totals.....	1,066,523.95			4,612.31		1,071,136.26

FUND BALANCES

(Schedule 3)

	180,000.00	92,200.00	4,563.99	12.16	238,088.81
Fund Balances for Year.....	180,000.00	92,200.00	4,563.99	12.16	238,088.81
Fund Balances, Dec. 31, 1934.....	339,086.55		5,982.05	1,245.01	346,313.61
Fund Balances, Dec. 31, 1935.....	309,527.19	92,200.00	4,118.06	1,257.17	584,402.42

°Red.

†Includes \$76,448.30 Frozen Deposit in Defunct Bank.

EXHIBIT "A"—SCHEDULE 1
ANALYSIS OF INCOME

Taxes—

Second Installment 1934-35.....	\$ 74,567.94	
First Installment 1935-36.....	187,876.63	262,444.57
<hr/>		
Delinquent Taxes 1928-29.....	18.80	
Delinquent Taxes 1929-30.....	3,979.32	
Delinquent Taxes 1930-31.....	7,569.62	
Delinquent Taxes 1931-32.....	28,970.30	
Delinquent Taxes 1932-33.....	59,416.28	
Delinquent Taxes 1933-34.....	4,332.73	
Partial Redemptions Under Senate Bills Nos. 65 and 3.....	37,823.45	142,110.50

Other Income—

Interest on Tax Redemptions.....	39,418.71		
Water Tolls	12,541.41		
Real Estate Rentals.....	24,541.47		
Sale of Electric Energy.....	551,047.22		
Interest on Bank Balances.....	3,027.54		
Tax Property Sales.....	785.28		
Misc. Equipment Rentals.....	1,108.37	632,470.00	1,037,025.07
	<hr/>	<hr/>	<hr/>

EXHIBIT "A"—SCHEDULE 2

ANALYSIS OF EXPENDITURES

Capital Maintenance—

Materials and Equipment.....	\$ 19,823.96	
Land and Buildings.....	299.70	
Canal Extensions.....	\$ 1,437.21	
Canal Betterments	17,119.09	18,556.30
<hr/>		
Drainage Wells—New	4,027.74	
Drainage Wells—Betterments	5,629.97	9,657.71
Upper Project—Betterments	4,054.67	52,392.34
<hr/>		

Maintenance and Operation—

General Overhead—

Board of Directors.....	3,572.81	
Legal Expense	2,757.17	
Engineering and Superintendent	10,954.93	17,284.91
<hr/>		
Election Expense		1,135.45

Office

General Office	13,594.22	
Treasurer's Office	1,300.30	
Assessor-Collector's Office	8,452.70	23,347.22
<hr/>		

Refunds, Insurance, Etc.—

Tax Refunds	42.62	
Pumping Plant Refunds.....	1,656.18	
Compensation Insurance	3,101.17	
Casualty Insurance	4,325.58	
Fidelity Bonds of Employees.....	574.18	
Damage Payments	2,372.90	12,072.63
<hr/>		

Irrigation Operations—

Distribution of Water.....	67,070.56	
Maintenance and Repairs.....	70,762.40	137,832.96
<hr/>		

Drainage Operations—

Operation of Drainage Wells.....	76,950.46	
M. & O. Drain Canals and Struct.	2,144.28	79,094.74
<hr/>		

Powerhouse Operation	22,185.05		
Crocker-Huffman Contract Pay- ments	41,123.23		
Deeded Tax Property Expense.....	2,228.24		
Uncollectible Accounts Receivable	1,110.40		
Drainage Contracts—			
Principal	10,000.00		
Interest	1,688.60	11,688.60	349,103.43
Total			401,495.77
Less—Depreciation on Equipment	13,777.66		
Accounts Receivable	5,963.69		19,741.35
Total Maintenance and Operation.....			381,754.42
Refinancing Expense—			
First Refunding Plan for Period April 1931 to Dec. 1933.....	94,240.20		
R. F. C. Cash Plan for Period June 1933 to Dec. 1935.....	78,488.35		
Interest on Bonds Deposited.....	239,838.98		412,569.53
Total General Fund.....			794,323.95
Bond Interest Coupons.....	4,260.00		
Interest on Registered Coupons.....	352.31		4,612.31
Total Expenditures			798,936.26

EXHIBIT "A"—SCHEDULE 3 RECONCILIATION WITH TREASURER

December 31, 1935

	Treasurer's Balances	Plus Collector's Funds	Less Outstanding Warrants	Fund Balances
General Fund.....	\$262,323.28	\$54,901.03	\$13,197.12	\$304,327.19
Operating Reserve Fund.....	180,000.00			180,000.00
Refunding Reserve Fund.....	92,200.00			92,200.00
Bond Interest Fund.....	1,418.06			1,418.06
Bond Principal Fund.....	1,257.17			1,257.17
Totals.....	537,498.51	54,901.03	13,197.12	579,202.42
Plus—Auditor's Fund Payroll Account.....				5,000.00
Petty Cash Advance.....				200.00
Total Funds.....				584,402.42

[708]

COMMENTS ON STATEMENT

The major items of income were \$142,110.50 of delinquent taxes, plus income from Power Plant of \$551,047.22, rental from District lands \$24,541, and interest on tax redemptions \$39,418.71.

The General Fund balance of \$309,527.19 includes \$187,876.63 of first installment of 1935-36 tax, and a frozen deposit item in defunct bank of \$76,448.30. Under agreement with the Reconstruction Finance Corporation, an Operating Reserve Fund of \$180,000 and a Refunding Reserve Fund of \$92,200 was set up, out of monies on hand.

The item of interest on bonds amounting to \$239,838.98 was interest paid to depositing bondholders from date of deposit as provided in the Cash Offer Plan, and interest to the Reconstruction Finance Corporation after disbursement was made of \$7,487,502.11 to purchase District's Old Securities in principal sum of \$14,540,000.

Refinancing costs amounting to \$94,240.20 covered a period from April 1931 to December 1933, and the further sum of \$78,488.35 covers costs of refinancing under the Cash Offer Plan, including collection of bonds, and legal costs in the Federal Bankruptcy Court.

Total costs of Operation and Maintenance of the District amounts to \$381,754.42. Included in these figures was the sum of \$41,123.23 paid on refunds on Crocker-Huffman Contracts, plus \$11,688.60 on contractual obligations with Merced County for

drainage district bonds, which includes principal and interest. Maintenance and Operation of Power Plant at Exchequer \$22,185.05. Distribution of water \$137,832.96. Drainage operations \$79,094.74.

There was expended for permanent improvements \$52,392.34. Included in this item are two new drainage wells and betterments to others at a cost of \$9,657.71. Betterments to canals including lining of canals with concrete \$18,556.30; betterments to upper project \$4,054.67.

Refinancing:

The Merced Irrigation District has been in default in payment of interest and principal on the original bond issue of \$16,250,000 since the year 1931. The Bondholders' Protective Committee and the District were not able to complete any refinancing plan during the period 1931 to 1935. With the consent of the Bondholders' Protective Committee the District applied to the Reconstruction Finance Corporation for a loan for purposes of refinancing in November of 1934. The Reconstruction Finance Corporation authorized a loan to the District of \$8,600,000 and agreed to purchase the Old Securities of the District from the holders for \$515.01 on each \$1,000 bond. The California Districts Securities Commission approved and authorized the refinancing plan with the Reconstruction Finance Corporation on the 15th day of February, 1935, and since that time said District has been operating thereunder. Up to December 31, 1935, 90% of the bond-

holders had made deposit of their bonds and sold them to the Reconstruction Finance Corporation in accordance with the above offer.

During the past three years it has been necessary for the District to operate under provisions of Section 11 of the California Districts Securities Commission, which was emergency legislature providing when districts were in default in excess of 20% of their obligations, an emergency tax rate would be fixed within the ability of the lands to pay and the moneys raised from said levies to be used for the operation of the district.

In April, 1935, the District filed its petition in the Federal Bankruptcy Court praying for a judgment of said Court declaring said plan of refinancing to be a fair and equitable plan. On February 14, 1936, Federal Judge George Cosgrave of the Northern Division of the Southern District rendered a judgment declaring the plan a fair and equitable plan and bringing all opposition bondholders thereunder.

MERCED IRRIGATION DISTRICT STATISTICS

As of December 31, 1935

Gross Area, Acres	190,125
Irrigable Acres	170,000
Acres Irrigated 1935 Gravity	90,000
Acres Irrigated	
(Private Pumping Plants)	9,000
Miles of Canals and Laterals	1,200

Miles Concrete Lined Canals	55
Miles Drainage Ditches	75
Drainage Pumps and Wells	86
Storage Capacity Exchequer Reservoir (Lake McClure)	289,000 acre-feet
Source of Supply	Merced River
Hydro Electric Power Plant at Exchequer	25,000 K. W.
Assessed Valuation 1935-36	\$12,078,870
Tax Rate 1935-36 (Emergency Rate), \$3.00 per \$100 of Assessed Valuation.	
Average Size of Farms	60 Acres
Cities and Towns: Merced (Gateway to Yosemite), Atwater, Livingston, Winton, Cressey, Tuttle, Planada and Le Grand.	
Population of District	20,000
Transportation: Main line Southern Pacific R. R., Oakdale branch S. P. R. R., Atchison, Topeka & Santa Fe R. R., Yosemite Valley R. R., Golden State Highway, Yosemite Highway, Pacheco Pass Highway to Yosemite Valley.	

ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1936

To the Board of Directors Merced Irrigation District:

Pursuant to and in accordance with Section 14a of the California Irrigation District Act, I submit herewith a statement of the financial condition of the Merced Irrigation District showing receipts and disbursements by Funds for the year 1936.

H. P. SARGENT,

Secretary.

E. E. NEEL,

Auditor.

Subscribed and sworn to before me this 27th day of April, 1936.

[Seal] P. BERTAINA,

Notary Public in and for the County of Merced,
State of California.

EXHIBIT "A"
STATEMENT OF INCOME EXPENDITURES
AND FUND BALANCES
AS OF DECEMBER 31, 1936

	Receipts (Schedule "A")	Expenditures (Schedule "B")	Fund Transfers	Fund Balances (Schedule "C")	
				Year 1936	Dec. 31, 1936
General Fund—					
Current Operative.....	\$ 716,811.74	\$470,322.23	*\$92,200.00	\$154,289.51	†\$ 463,816.70
Operation Reserve.....	1,324.56			1,324.56	181,324.56
Bond Interest Fund—.....	6.61	1,485.20	63.48	* 1,415.11	1,418.06
Bond Principal Fund—.....	6.31		*	63.48	57.17
Second Refunding					1,257.17
Bond Interest Fund.....	475,248.06	301,465.19			173,781.87
Second Refunding					
Reserve Fund.....	678.50		92,200.00	92,878.50	185,078.50
Totals.....	\$1,194,075.78	\$773,273.62		\$420,802.16	\$1,005,204.58

*Red.

†Includes \$76,448.30 Frozen Deposit in Defunct Bank

ANALYSIS OF INCOME

(Schedule "A")

Taxes—

Second Installment 1935-36.....	\$129,868.89	
First Installment 1936-37.....	199,707.93	\$329,576.82
<hr/>		
Delinquent Taxes 1929-30.....	1,319.40	
Delinquent Taxes 1930-31.....	9,861.16	
Delinquent Taxes 1931-32.....	39,418.88	
Delinquent Taxes 1932-33.....	80,238.03	
Delinquent Taxes 1933-34.....	4,602.43	
Delinquent Taxes 1934-35.....	4,587.30	
Partial Redemptions under		
Senate Bills Nos. 65 and 3.....	15,418.05	155,445.25
<hr/>		

Other Income—

Interest on Tax Redemptions.....	39,323.31	
Water Tolls	16,765.66	
Real Estate Rentals.....	45,820.93	
Sale of Electric Energy.....	584,429.64	
Interest on Bank Balances.....	5,351.70	
Tax Property Sales.....	16,599.22	
Misc. Equipment Rentals.....	763.25	709,053.71
<hr/>		

Total		\$1,194,075.78
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ANALYSIS OF EXPENDITURES

(Schedule "B")

Capital Maintenance—

Materials and Equipment.....		\$ 15,723.50
Land and Buildings.....		1,071.20
Canal Extensions	\$ 3,346.20	
Canal Betterments	43,636.78	46,982.98
<hr/>		
Drainage Wells—New	5,827.92	
Drainage Wells—Betterments	9,129.82	14,957.74
<hr/>		

Drainage Canals—New	247.38		
Upper Projects—Betterments	1,205.05	\$	80,187.85
<hr/>			
Maintenance and Operation—			
General Overhead—			
Board of Directors.....	3,361.58		
Legal Expense	4,923.27		
Engineering and Superintendence	14,005.40	22,290.25	
<hr/>			
Office—			
General Office	13,604.01		
Treasurer's Office	1,285.45		
Assessor-Collector's Office	7,937.85	22,827.31	
<hr/>			
Refunds, Insurance, Etc.—			
Tax Refunds	1.50		
Pumping Plant Refunds.....	317.80		
Compensation Insurance	4,763.40		
Casualty Insurance.....	5,253.41		
Fidelity Bonds of Employees.....	450.00		
Damage Payments	68.64	10,854.75	
<hr/>			
Irrigation Operations—			
Distribution of Water.....	65,174.60		
Maintenance and Repairs.....	86,800.09	151,974.69	
<hr/>			
Drainage Operations—			
Operation of Drainage Wells.....	87,899.44		
M. & O. Drain Canals and Structures	10,223.56	98,123.00	
<hr/>			
Powerhouse Operation		20,768.18	
C-H Contract Payments.....		35,798.38	
Deeded Tax Property Expense..		3,933.69	
Drainage Contracts—			
Principal	11,200.00		
Interest	1,287.10	12,487.10	379,057.35
<hr/>			
Total			\$459,245.20

Less—Depreciation on Equip- ment	12,560.35	
Accounts Receivable	108.82	12,669.17
	<hr/>	<hr/>
Total Maintenance & Operation Plus—Refinancing Expense— Legal Opinion on Second Re- Funding Bond Issue, Fees and Expenses in Bankruptcy Court		446,576.03
		<hr/>
Total General Fund.....		470,322.23
Interest on Reconstruction Fi- nance Corporation Loan per Agreement		301,466.19
Bond Interest Coupons Regis- tered (Old Issue).....	1,417.50	
Interest on Registered Coupons	67.70	1,485.20
	<hr/>	<hr/>
Total Expenditures		\$773,273.62

RECONCILIATION WITH TREASURER

December 31, 1936

(Schedule "C")

	Treasurer's Balances	Less Outstanding Warrants	Fund Balances
General Fund—			
Current Operative	\$ 479,552.90	\$ 20,936.20	\$ 458,616.70
Operation Reserve	181,324.56		181,324.56
Bond Interest Fund	2.95		2.95
Bond Principal Fund	1,200.00		1,200.00
Second Refunding Bond Interest Fund	173,781.87		173,781.87
Second Refunding Reserve Fund	185,078.50		185,078.50
Totals	\$1,020,940.78	\$ 20,936.20	1,000,004.58
Plus—*Auditor's Fund Payroll Account			\$ 5,000.00
*Petty Cash Advance			200.00
Total Funds			\$1,005,204.58

*General Fund Operative.

MERCED IRRIGATION DISTRICT
STATISTICS

As of December 31, 1936

Gross Area, Acres	190,125
Irrigable Acres	170,000
Acres Irrigated 1936 Gravity	103,000
Acres Irrigated	
(Private Pumping Plants)	9,000
Miles of Canals and Laterals	1,200
Miles Concrete Lined Canals	63
Miles Drainage Ditches	75
Drainage Pumps and Wells	86
Storage Capacity Exchequer Reservoir	
(Lake McClure)	289,000 acre-feet
Source of Supply	Merced River
Hydro Electric Power Plant	
at Exchequer	25,000 K. W.
Assessed Valuation 1936-37	\$11,420,790
Tax Rate 1936-37 (Emergency Rate), \$3.00 per \$100 of Assessed Valuation.	
Average Size of Farms	60 Acres
Cities and Towns: Merced (Gateway to Yosemite), Atwater, Livingston, Winton, Cressey, Tuttle, Planada and Le Grand.	
Population of District	20,000
Transportation: Main line Southern Pacific R. R., Oakdale branch S. P. R. R., Atchison, Topeka & Santa Fe R. R., Yosemite Valley R. R., Golden State Highway, Yosemite Highway, Pacheco Pass Highway to Yosemite Valley.	

ANNUAL STATEMENT OF THE FINANCIAL
CONDITION OF MERCED IRRIGATION
DISTRICT FOR YEAR 1937

To the Board of Directors Merced Irrigation Dis-
trict:

Pursuant to and in accordance with Section 14a
of the California Irrigation District Act, I submit
herewith a statement of the financial condition of
the Merced Irrigation District showing receipts and
disbursements by Funds for the year 1937.

H. P. SARGENT,

Secretary.

E. E. NEEL,

Auditor.

Subscribed and sworn to before me this 15th day
of February, 1938.

[Seal] P. BERTAINA,

Notary Public in and for the County of Merced,
State of California.

EXHIBIT "A"
STATEMENT OF INCOME AND EXPENDITURES
AND FUND BALANCES
FOR YEAR ENDING DECEMBER 31, 1937

Receipts (Schedule 1)	General Fund	Bond Interest Fund	Bond Principal Fund	Refunding Bond Int. Fund	Refunding Reserve Fund	Total All Funds
Taxes, 1937-38 1st Inst.....	\$200,918.88	\$	\$	\$		\$ 200,918.88
Taxes, 1936-37 Current.....	123,704.27					123,704.27
Taxes, 1928-35 Delinquent.....	98,511.10			475,000.00		98,511.10
Sale of Electric Energy.....	127,008.94					602,008.94
Other Income	109,250.40	1.44	5.41	1,009.36	1,843.92	112,200.53
Total Receipts	659,393.59	1.44	5.41	476,099.36	1,843.92	1,137,343.72
Transfer from General Fund					92,200.00	92,200.00
Total Receipts & Transfer	659,393.59	1.44	5.41	476,099.36	94,043.92	1,229,543.72

Less Disbursements (Schedule 2)	General Fund	Bond Interest Fund	Bond Principal Fund	Refunding Bond Int. Fund	Refunding Reserve Fund	Total All Funds
General Fund	704,096.40			301,953.89		704,096.40
Interest, R. F. C. Agreement						301,953.89
Total Disbursements	704,096.40			301,953.89		1,006,050.29
Transfer to Ref. Reserve Fund	92,200.00					92,200.00
Total Disb. & Transfer	796,296.40			301,953.89		1,098,250.29
Fund Balances						
Year 1937	°136,902.81	1.44	5.41	174,145.47	94,043.92	131,293.43
Dec. 31, 1936	645,141.26	2.95	1,200.00	173,781.87	185,078.50	1,005,204.58
Dec. 31, 1937	*508,238.45	4.39	1,205.41	347,927.34	279,122.42	1,136,498.01

° Red

* Includes \$183,142.57 Operation Reserves

ANALYSIS OF INCOME

(Schedule "A")

Taxes—

First Installment 1937-38.....	\$200,918.88	
Second Installment 1936-37	123,704.27	\$324,623.15

Delinquent Taxes 1928-29...	324.06	
Delinquent Taxes 1929-30...	2,241.60	
Delinquent Taxes 1930-31...	9,969.02	
Delinquent Taxes 1931-32...	32,922.63	
Delinquent Taxes 1932-33...	46,372.85	
Delinquent Taxes 1933-34...	4,125.26	
Delinquent Taxes 1934-35...	2,529.17	
Delinquent Taxes 1935-36...	6,220.29	
Partial Redemptions under Senate Bills No.'s 65, 3 & 193	6,193.78	98,511.10

Other Income—

Interest on Tax Redemp- tions	21,076.52	
Water Tolls	16,048.60	
Real Estate Rentals.....	44,051.12	
Sale of Electric Energy.....	602,008.94	
Interest on Bank Balances..	8,298.09	
Tax Property Sales.....	22,418.60	
Inclusion Fee	170.85	
Misc. Equipment Rentals....	136.75	714,209.47

Total Income		\$1,137,342.72
--------------------	--	----------------

° Red

ANALYSIS OF EXPENDITURES

(Schedule "B")

Capital Maintenance—

Materials & Equipment ...		\$ 20,014.49
Lands & Buildings.....		682.49
Canal Extensions	3,878.48	
Canal Betterments	79,938.09	83,816.57

Drainage Wells—New	2,423.47		
Drainage Wells—Better- ments	4,676.53	7,100.00	
<hr/>			
Upper Project—Better- ments	506.88		
Reservoir Lands, (Judg- ment)	3,275.00	3,781.88	\$ 115,395.43
<hr/>			
Maintenance and Operation—			
General Overhead—			
Board of Directors.....	3,254.88		
Legal Expense	3,280.09		
Engineering & Superin- tendence	18,864.41	25,399.38	
<hr/>			
Refinancing Expense		16,928.90	
Office—			
General Office	14,795.54		
Treasurer's Office	1,271.50		
Assessor-Collector's office.....	7,696.12	23,763.16	
<hr/>			
Refunds, Insurance, etc.—			
Tax Refunds			
Pumping Plant Refunds			
Compensation Insurance.....	4,431.11		
Casualty Insurance	11,225.58		
Fidelity Bonds of Em- ployees	450.00		
Damage Payments	450.25	16,556.94	
<hr/>			
Irrigation Operations—			
Distribution of Water.....	72,837.82		
Maintenance & Repairs.....	96,137.95	168,975.77	
<hr/>			
Drainage Operations—			
Operation of Drainage Wells	90,028.19		
M. & O. Canals & Struc- tures	21,949.88	111,523.07	
<hr/>			

Powerhouse Operation	21,045.54		
Crocker-Huffman Contract Payments			
Payments due Year 1937.....	52,580.41		
Payments due prior Year 1937	72,430.79	125,011.20	
Deeded Tax Property Expense		5,567.98	
Drainage Contracts—			
Principal	10,600.00		
Interest	651.57	11,251.67	526,023.61
Total			641,419.04
Less—Depreciation on			
Equipment		12,891.57	
Accounts Receivable..		844.46	12,047.11
Total Maintenance & Operation			629,371.93
Plus—Loss (Defunct)			
Farmers & Merchants Bank			74,724.47
Total General Fund.....			704,096.40
Interest Account Recon- struction Finance Corp. Agreement			301,953.89
Total Expenditures and Loss			\$1,006,059.29

MERCED IRRIGATION DISTRICT STATISTICS

As of December 31, 1937

Gross Area, Acres	190,125
Irrigable Acres	170,000
Acres Irrigated, 1937 Gravity	90,135
Acres Irrigated	
(Private Pumping Plants)	9,000
Miles of Canals and Laterals	1,200
Miles Concrete Lined Canals	72
Miles Drainage Ditches	75
Drainage Pumps and Wells	87
Storage Capacity Exchequer Reservoir	
(Lake McClure)	283,000 Acre-Feet
Source of Supply	Merced River
Hydro Electric Power Plant	
at Exchequer	25,000 K. W.
Assessed Valuation 1937-38	\$11,468,155
Tax Rate 1937-38 (Emergency Rate), \$3.00 per \$100 of Assessed Valuation.	
Average Size of Farms	60 Acres
Cities and Towns: Merced (Gateway to Yosemite), Atwater, Livingston, Winton, Cressey, Tuttle, Planada and Le Grand.	
Population of District	21,000
Transportation: Main line Southern Pacific R. R., Oakdale branch S. P. R. R., Atchison, Topeka & Santa Fe R. R., Yosemite Valley R. R., Golden State Highway, Yosemite Highway, Pacheco Pass Highway to Yosemite Valley.	

RESPONDENTS' EXHIBIT "Y"

was a list of amounts of bonds held or represented by members of the Committee, as follows:

Stevenot	\$3,085,000.		
Fullerton	25,000.		
Etienne	100,000.		
Gillett	5,000.		
Elworthy	?		
Huntley	?		
Hubbard	20,000.		
Borland	48,000.	?	
Bates	48,000.	?	
Bekins, Milo	?	\$25,000.	} Estates \$216,000.
Bekins, Reed	?	4,000.	
Irvine	97,000.		
Crothers	9,000.		

[711]

RESPONDENTS' EXHIBIT "Z"

This exhibit was Balance Sheet of the District as of November 1, 1938, as follows: [712]

Balance Sheet #1

Merced Irrigation District

PRO-FORMA BALANCE SHEET

Period Ending November 1st, 1938

Showing financial condition of the Merced Irrigation District assuming assets on District Balance Sheet to be correct, and assuming all old bonds deposited are owned by Reconstruction Finance Corp.

Assets:

Current

Treasurer's Cash	\$ 1,578,446.14
Secty. Revolving Funds.....	5,200.00
Tax Sale Certificates.....	206,096.93
Sundry Debtors	39,364.99
<hr/>	
Total Current Assets.....	1,829,108.06
Capital Assets:	
General Properties	19,260,927.54
General Equipment	98,204.49
<hr/>	
Total Capital Assets.....	19,359,132.03
Less Depreciation	709,338.83
<hr/>	
Net Capital Assets.....	18,649,793.20
Total Assets	20,478,901.26

Current Liabilities:

Warrants Payable—Outstanding	13,810.93
Unpaid Matured Bond Int. Coupons.....	5,076,185.00
Less interest paid R. F. C. at 4%.....	824,684.00
<hr/>	
Less interest paid depositing bond- holders at 4%.....	168,582.26
<hr/>	
Unpaid Matured Bonds.....	387,000.00

Accrued Int. on Reg. Bonds and Coupons	1,004,887.54	
Less credit for accrued interest on portions of coupons which would have been paid by interest payments to depositing bondholders and R. F. C.....	129,100.00	875,787.54
Drainage District Contracts.....		8,739.00
Balance 1938 Budget Operations (Est.)		80,000.00
Total Current Liabilities.....		5,448,256.47
Capital Liabilities:		
Principal amount of Bonds Unpaid.....	16,191,000.00	
Less unpaid matured bonds.....	387,000.00	15,804,000.00
Capital Surplus—Deficit		d.773,355.21
Total Liabilities and Capital.....		20,478,901.26

[Endorsed]: Respondents' Exhibit Z. Filed Nov. 25, 1938. [713]

RESPONDENTS' EXHIBIT NO. "AA"

This exhibit was Balance Sheet of the District as of November 1, 1938, as follows: [714]

BALANCE SHEET #6

Merced Irrigation District

Assuming November 1st, 1938 balance Sheet showing total liabilities and assuming old bonds held by Reconstruction Finance Corp. to be cancelled or owned by the District, and showing existing assets,

Current Assets

Treasurer's Cash	\$ 1,578,446.14
Sec'y. Revolving Funds.....	5,200.00
Tax Sale Certificates.....	206,096.93
Sundry Debtors	39,364.99
Total Current Assets.....	1,829,108.06

Capital Assets:

General Properties	19,260,927.54
General Equipment	98,204.49
<hr/>	
Total Capital Assets.....	19,359,132.03
Less Depreciation	709,338.83
<hr/>	
Net Capital Assets.....	18,649,793.20
Total Assets	20,478,901.26

Current Liabilities:

Warrants Payable—Outstanding	13,810.93
District Contracts Drainage.....	8,739.00
Balance 1938 Budget Operations (Est.).....	80,000.00
<hr/>	
Total Current Liabilities.....	102,549.93

Capital Liabilities:

Principal Amount RFC lien.....	7,570,871.60
Principal amount non deposited outstanding bonds	1,488,000.00
Unpaid coupons on non deposited bonds.....	995,000.00
<hr/>	
Accrued interest on non deposited bonds.....	78,927.11
<hr/>	
Capital Surplus	10,743,552.62
Total Liabilities and Capital.....	20,478,901.26
<hr/>	

[Endorsed]: Respondents' Exhibit AA. Filed
Nov. 25, 1938. [715]

RESPONDENTS' EXHIBIT NO. BB

Market Quotation Chart

This exhibit consisted of a market quotation chart issued by Elworthy and Company, investment securities, San Francisco. Under their sheet issued by their Trading Department was listed the item "5M

Merced Union High School District 5%, 7/1/36, 1.10% ". This trading list was dated February 5, 1935, and the Merced School Bonds were listed under the heading of Short Term.

Under the heading of irrigation and reclamation district Merced bonds were quoted bid 56 flat. [716]

RESPONDENTS' EXHIBIT NO. "CC"

This exhibit was Balance Sheet of the District as of November 1, 1938, as follows: [717]

BALANCE SHEET #5

Merced Irrigation District

PRO-FORMA BALANCE SHEET

Period Ending November 1, 1938

Balance sheet assuming existing assets and assuming Reconstruction Finance Corp. holds as owner at par and that a refunding plan could now be adopted for refunding at par flat

Current Assets:

Treasurer's Cash	1,578,446.14
Secy. Revolving Funds.....	5,200.00
Tax Sale Certificates.....	206,096.93
Sundry Debtors	39,364.99

Total Current Assets.....	1,829,108.06
---------------------------	--------------

Capital Assets:

General Properties	19,260,927.54
General Equipment	98,204.49

Total Capital Assets.....	19,359,132.03
---------------------------	---------------

Less Depreciation	709,338.83
-------------------------	------------

Total Assets	20,478,901.26
--------------------	---------------

Current Liabilities:

Warrants Payable—Outstanding	13,810.93
Unpaid Matured Bonds.....	337,000.00
Drainage District Contracts.....	8,739.00
Balance 1938 Budget Operations (Est).....	80,000.00
	<hr/>
	102,549.93
Total Current Liabilities.....	489,549.93

Capital Liabilities:

Outstanding bonds	** 20,478,901.26	16,191,000.00
Total Capital Liabilities		
from Total Assets**	16,201,549.93	
Capital Surplus—would be.....		4,183,351.33
		<hr/>
Total Capital and Liabilities.....		20,478,901.26

[Endorsed]: Respondents' Exhibit CC. Filed
Nov. 25, 1938. [718]

RESPONDENTS' EXHIBIT "DD"

This exhibit consisted of a Study of Operation of Exchequer Power Plant, 1902-1935, and is a report of Carl A. Heinze, reading as follows: [719]

Carl A. Heinze
Consulting Electrical Engineer
14th Floor Continental Building
408 South Spring Street
Los Angeles
Mutual 5757

Purpose:

This study has been made of the Merced Irrigation District for the purpose of showing what the results would have been of the operation of the Exchequer Power Plant had the District been

formed and the dam and powerhouse been completed during the year 1901. This would have enabled the District to start the storage of water in the reservoir at the beginning of the year 1902.

Basis:

This study is based on the premise, that the reservoir was empty and the equipment in the power house, at the Exchequer Dam, was installed and ready to operate as of January 1st, 1902. Also, it is assumed that the present existing contract between the Merced Irrigation District and the San Joaquin Light & Power Corporation for the sale of energy generated at the power house was in effect at that time and that the terms of the contract were identical to present conditions. The controlling demands of the water users below the reservoir were considered to take precedence over the requirements of water for power generation. The irrigating season was taken as the period March to October inclusive. The maximum flow for power generation was taken at 1600 cubic feet per second. The maximum load on the plant based on the terms of the contract with the San Joaquin Light & Power Corporation was taken at 31250 kilowatts at eighty (80) percent daily load factor.

This factor, or ratio of kilowatt hours generated to the number of acre feet of water passing through the plant was obtained from an analysis made of the District's actual operating results for their entire history. This factor was based on the average height of water in the reservoir during the month.

This is all shown graphically on Chart E-16. The maximum capacity of the reservoir was taken as 289,000 acre feet. [720]

The water storage in the reservoir was kept, as far as practical, above forty thousand acre feet for the benefit of power generation. A number of dry seasons, however, made this, at times, impossible.

Sources:

All stream flow were taken from, United States Geological Survey, Water Supply papers for the years from 1902 to 1935, inclusive, with the exception of the period from December, 1913, to November, 1915, inclusive. For this period assumptions were made based upon Bulletin #5 of the Division of Engineering and Irrigation of the State of California, as shown in Table #87 on page 232. The general summary, however, shows average values for the entire period, with and without, the flow in these two years. It was found that gauging stations were moved during the period studied but in every case new gauging stations were selected having approximately the same drainage area.

Use:

The study was started on January 1st, 1902, with the reservoir empty. The available water supply was then obtained from the appropriate government record for the month of January, 1902, and allowed to store in the reservoir giving a total water storage at the end of the month. As no power generation took place, this storage was carried over to the

month of February and together with the available water supply for February gave a total at the end of the month which again, on account of no power generation, was carried over into the month of March. The available water supply then, for the month of March, was taken and added to the storage on hand at the beginning of the month and power generation commenced. The draft through the power plant was then subtracted from the total of water available and the balance of water remaining in the reservoir carried over to the next month. From the average water in storage during the month the average elevation of the water in the reservoir was determined from the capacity curve of the reservoir, shown on drawing C-3. With the average elevation of water obtained, the factor, or ratio of kilowatt hours to acre feet, was [721] then determined for that elevation. The draft through the power house was then multiplied by this factor and the total kilowatt hours output for the month determined.

This process continued month by month thereafter for the entire period from 1902 to 1926 inclusive. The number of kilowatt hours for the year thus obtained was multiplied by \$.0045 to obtain the gross annual revenue.

The operating expenses of the power plant were taken as \$21,500.00, representing the seven year average taken from the District's records. Depreciation on the entire investment in power plant

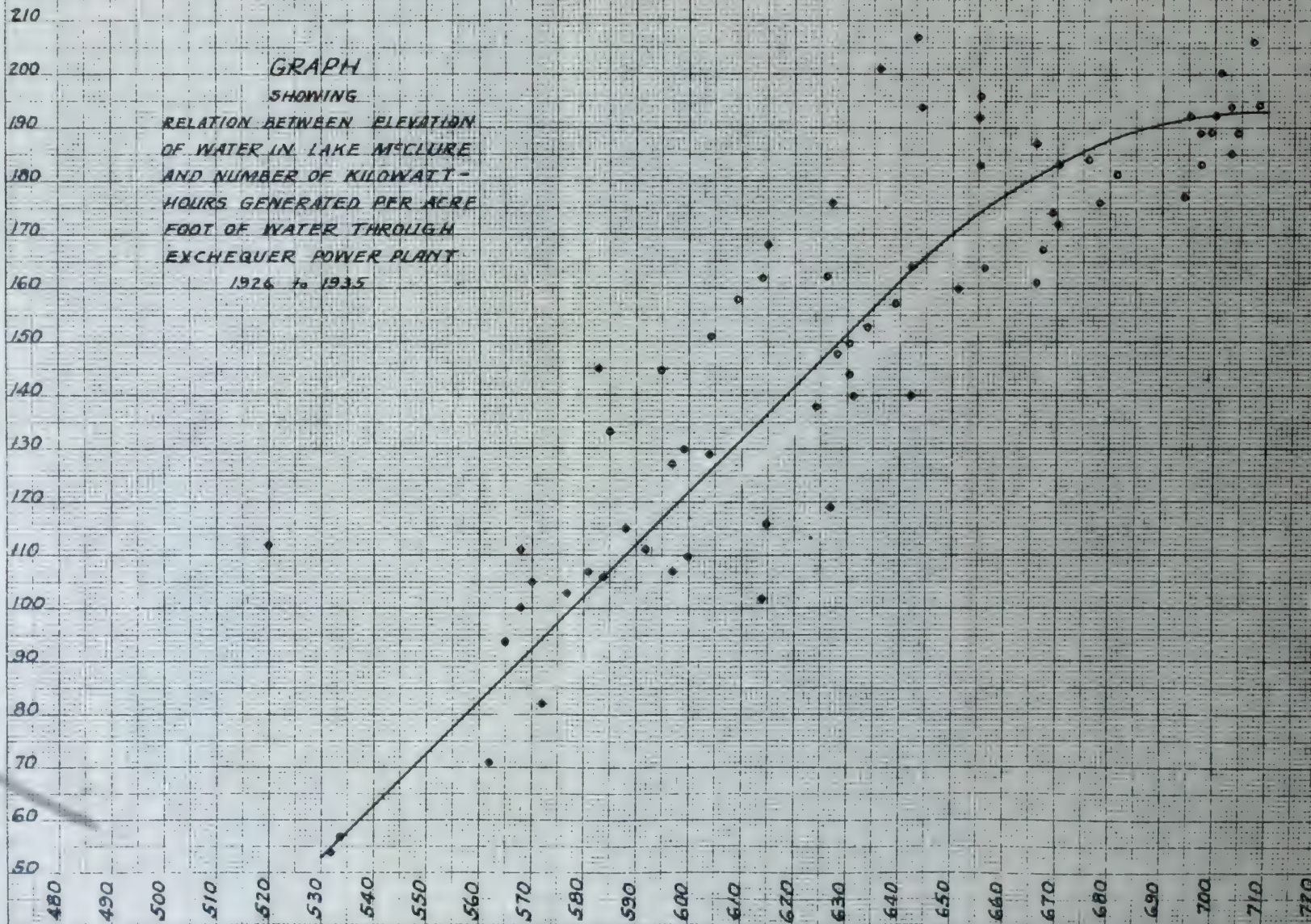
buildings, equipment and appurtenant structures exclusive of the reservoir and dam, was computed on both straight line method, as actually used and set up by the District, and on the five percent sinking fund method, with lives as used by the California Railroad Commission.

This study shows that for the period 1902 to 1935 inclusive, using estimated figures for 1902 to 1926 inclusive, and actual figures for 1927 to 1935 inclusive, that the average gross income was approximately \$500,000.00, and the net income approximately \$450,000.00.

February 10th, 1936. [722]

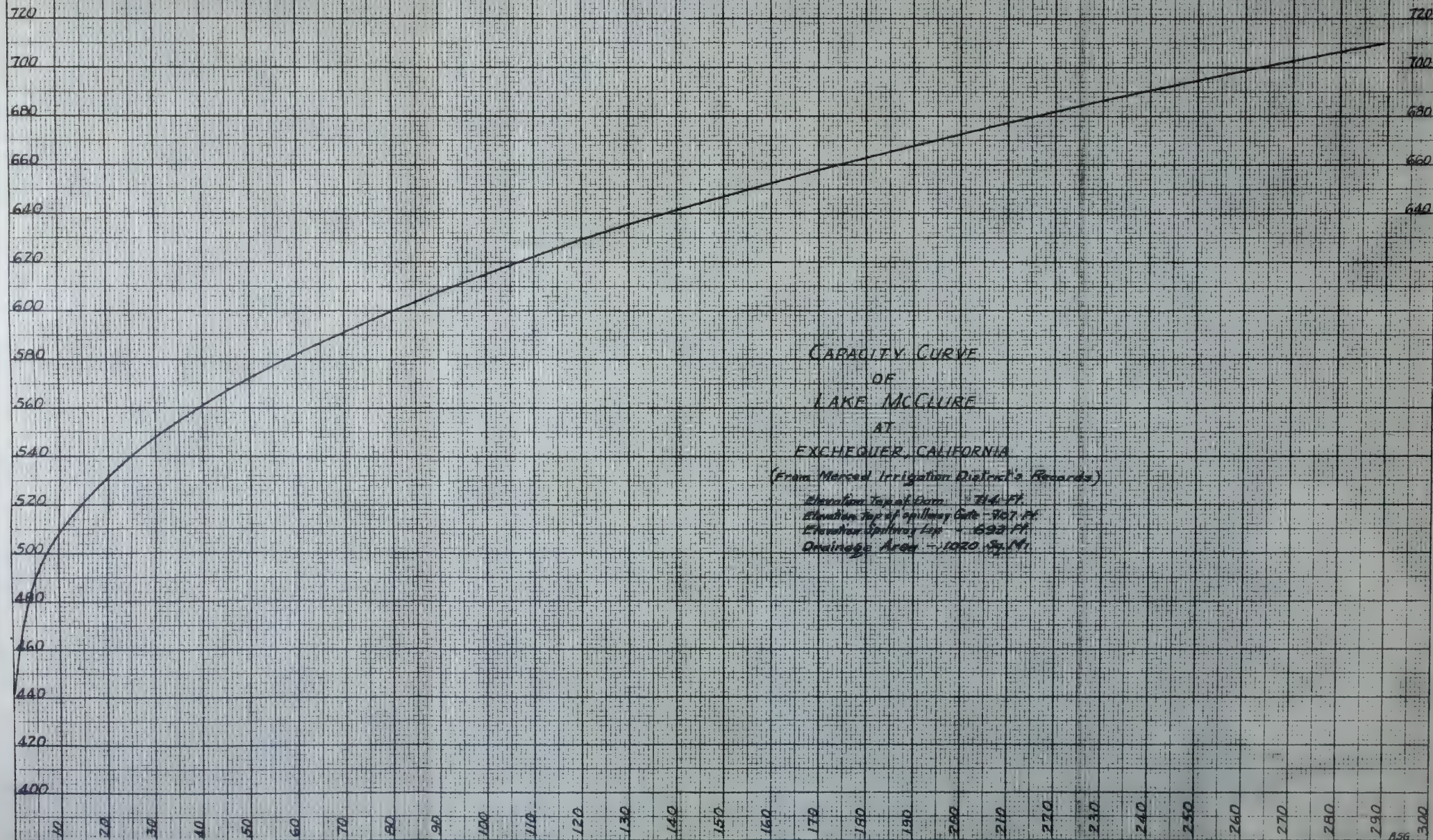
GRAPH
SHOWING
RELATION BETWEEN ELEVATION
OF WATER IN LAKE MCCLURE
AND NUMBER OF KILOWATT-
HOURS GENERATED PER ACRE
FOOT OF WATER THROUGH
EXCHEQUER POWER PLANT
1926 to 1935

KILOWATT-HOURS GENERATED PER ACRE FOOT OF WATER



ELEVATION OF WATER SURFACE IN RESERVOIR - (Feet above Sea Level) CHART NO. E-16

ELEVATION OF WATER SURFACE - (Feet above Sea Level)



SUMMARY
OF
ESTIMATED AND ACTUAL GROSS REVENUE
OPERATING EXPENSES AND NET INCOME
OF

MERCED IRRIGATION DISTRICT
FOR YEARS 1902 TO 1935

Straight Line Depreciation
(District's Method)
exclusive of Dam & Intake

vs. Merced Irr. Dist., et al.

897

Year	Gross Revenue	Expense		Net Income
		Oper- ating	Depre- ciation	
1902	\$476,618	21,500	22,854	432,264
1903	598,170	21,500	22,854	553,816
1904	657,393	21,500	22,854	613,039
1905	482,955	21,500	22,854	438,601
1906	761,976	21,500	22,854	717,622
1907	755,240	21,500	22,854	710,886
1908	245,725	21,500	22,854	201,371
1909	815,087	21,500	22,854	770,733
1910	594,922	21,500	22,854	550,568
1911	796,407	21,500	22,854	752,053
1912	297,510	21,500	22,854	253,156
1913	218,279	21,500	22,854	173,925
1914*	610,623	21,500	22,854	566,269
1915*	583,569	21,500	22,854	539,215
1916	742,600	21,500	22,854	698,246
1917	615,776	21,500	22,854	571,422

Year	Gross Revenue	Expense		Net Income
		Oper-	Depre- ciation	Total Expense
1918	544,377	21,500	22,854	44,354
1919	413,859	21,500	22,854	44,354
1920	480,443	21,500	22,854	44,354
1921	560,841	21,500	22,854	44,354
1922	671,382	21,500	22,854	44,354
1923	566,433	21,500	22,854	44,354
1924	138,905	21,500	22,854	44,354
1925	562,451	21,500	22,854	44,354
1926	400,294	21,500	22,854	44,354
1927	569,650	26,406	22,854	49,260
1928	485,757	25,302	22,854	48,156
1929	296,412	23,837	22,854	46,691
1930	308,931	22,000	22,854	44,854
1931	95,917	17,378	22,854	40,232
1932	605,630	20,947	22,854	43,801
1933	316,924	19,221	22,854	42,075
1934	191,936	15,989	22,854	38,843
1935	551,114	22,185	22,854	45,039
<hr/>				
Total	34 yrs.....\$17,014,106	\$730,765	\$777,036	\$1,507,801
Average	34 yrs.....500,415	21,493	22,854	44,347
<hr/>				
Total	32 yrs.....15,819,914	687,765	731,328	1,419,093
Average	32 yrs.....494,372	21,493	22,854	44,347
<hr/>				
Total	32 yrs.....\$15,506,305			\$15,506,305
Average	32 yrs.....456,068			456,068
<hr/>				
Total	32 yrs.....14,400,821			14,400,821
Average	32 yrs.....450,026			450,026

* Available water supply estimated during 1914 and 1915

32 year total and average exclude years 1914 and 1915 during which no stream flow measurements are available. [725]

SUMMARY
OF
ESTIMATED AND ACTUAL GROSS INCOME
OPERATING EXPENSES AND NET INCOME
OF

MERCED IRRIGATION DISTRICT
FOR YEARS 1902 TO 1935

5% Sinking Fund Method
exclusive of Dam & Intake

Year	Revenue Gross	Expense		Net Income
		Oper- ating	Depre- ciation	
1902	476,618	21,500	10,990	444,128
1903	598,170	21,500	10,990	565,680
1904	657,393	21,500	10,990	624,903
1905	482,955	21,500	10,990	450,465
1906	761,976	21,500	10,990	729,486
1907	755,240	21,500	10,990	722,750
1908	245,725	21,500	10,990	213,235
1909	815,087	21,500	10,990	782,597
1910	594,922	21,500	10,990	562,432
1911	796,407	21,500	10,990	763,917
1912	297,510	21,500	19,990	265,020
1913	218,279	21,500	10,990	185,789
1914*	610,623	21,500	10,990	578,133
1915*	583,569	21,500	10,990	551,079
1916	742,600	21,500	10,990	710,110
1917	615,776	21,500	10,990	583,286
1918	544,377	21,500	10,990	511,887

Year	Expense			Net Income
	Gross Revenue	Oper- ating	Depre- ciation	Total Expense
1919	413,859	21,500	10,990	32,490
1920	480,443	21,500	10,990	32,490
1921	560,841	21,500	10,990	32,490
1922	671,382	21,500	10,990	32,490
1923	566,433	21,500	10,990	32,490
1924	138,905	21,500	10,990	32,490
1925	562,451	21,500	10,990	32,490
1926	400,294	21,500	10,990	32,490
1927	569,650	26,406	10,990	37,396
1928	485,757	25,302	10,990	36,292
1929	296,412	23,837	10,990	34,827
1930	308,931	22,000	10,990	32,990
1931	95,917	17,378	10,990	28,368
1932	605,630	20,947	10,990	31,937
1933	316,924	19,221	10,990	30,211
1934	191,936	15,989	10,990	26,979
1935	551,114	22,185	10,990	33,175
<hr/>				
Total 34 yrs.	17,014,106	730,765	373,660	1,104,425
Average 34 yrs.	500,415	21,493	10,990	32,483
<hr/>				
Total 32 yrs.	15,819,914	687,765	351,680	1,039,445
Average 32 yrs.	494,372	21,493	10,990	32,483
<hr/>				
Total 34 yrs.				15,909,681
Average 34 yrs.				467,932
<hr/>				
Total 32 yrs.				14,780,469
Average 32 yrs.				461,890

* Available water supply estimated during 1914 and 1915

32 yr. total and average exclude years 1914 and 1915 during which no stream flow measurements are available.

ANNUAL REPORT
OF
MERCED IRRIGATION DISTRICT
TO
FEDERAL POWER COMMISSION
Oct. 1st - 1930
Sept. 30th - 1931

II Tangible Fixed Capital

1. Production Capital

(b) Hydraulic power generation:

312	Hydraulic power plant land	
	(a) Land owned in fee or held	
	under perpetual rights.....	\$6,379,466.38
	(b) Land held for a limited period	
313	Hydraulic power plant structures.....	353,206.98
314	Reservoirs, dams, and intakes.....	3,892,828.63
317	Forebays, penstocks and tail races.....	214,808.79
318	Production Roads and Trails.....	7,603.32
319	Water turbines and water wheels.....	154,586.87
320	Electric Equipment—hydro	416,914.69
323	Miscellaneous power plant equipment.....	7,384.75
382	Production Communication System.....	661.06
Total hydro-power generation.....		\$11,427,461.67

Note: Capital charges have remained practically constant since completion of project, so that year 1931 is typical and unchanged to date.

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MERCED IRRIGATION DISTRICT
OPERATING EXPENSES
AS SHOWN ON DISTRICT'S BOOKS

2-4-36

<u>Calendar Year</u>	<u>Annual Expense</u>	<u>Remarks</u>
1927	\$26,405.90	(Expense high account carrying over
1928	25,302.51	(from construction work
1929	23,837.02	
1930	22,000.18	
1931	17,378.54	Expense low account lay off—low water
1932	20,947.49	
1933	19,221.40	
1934	15,988.69	(Expense low account time partially
1935	22,185.05	(chargeable to construction work

Total \$193,266.78

Annual average—\$21,474.00

Total (excluding 1927-28-31-34)—\$108,191.14

Annual average—\$21,638.00

Use—\$21,500.00

DETAIL OF OPERATING EXPENSES
FOR YEAR 1935

<u>Account No.</u>	<u>Item</u>	<u>Amount</u>
731	Power House Superintendence.....	\$ 2,436.00
733	Station Labor	7,960.00
734	Miscellaneous Labor	6,505.53
746	Maintenance Production	
	Roads and Trails.....	1,410.29
747	Maintenance to water wheels and turbines	276.51
756	Production rents	819.90
Total		\$21,881.70
Plus depreciation		303.35
		<hr/> \$22,185.05

Taken from District's Books

2-4-36.

MERCED IRRIGATION DISTRICT

DETAIL OF
CAPITAL INVESTMENT AND DEPRECIATION RESERVE
AS OF DECEMBER 31, 1935.

Acct. No.		Capital	Per Cent	Annual Depreciation
313.	Hydraulic P. P. Structures:			
.1	Operators Cottages	17,711.23	2	354.22
.2	Office Bldg. School, etc.....	16,381.72	8	1,310.54
.3	Refrigeration Plant	1,569.10	10	156.91
.4	Power House Bldg.....	311,488.84	1	3,114.89
.5	Camp Water Supply.....	6,056.09	2.5	151.40
		353,206.98		
314.	Reservoir Dam & Intake.....	3,892,828.63	1	38,928.29
317.	Penstocks	214,808.79	1.5	3,228.13
319.	Water Wheels & Turbine.....	154,586.87	2.5	3,864.67
320.	Electrical Equipment	416,914.69	2.5	10,422.87
323.	Misc. Power Plant Equip....	7,384.75	2.5	184.62
382.	Communication System Tel.	661.06	10	66.11
		<hr/>		<hr/>
		\$5,040,391.77		\$61,782.65
	Less Reservoir & Dam.....	3,892,828.63		38,928.29
		<hr/>		<hr/>
		\$1,147,563.14		\$22,854.36

Taken from books of the District—2/4/36

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MERCED IRRIGATION DISTRICT

DETAIL OF

CAPITAL INVESTMENT AND DEPRECIATION RESERVE

AS OF DECEMBER 31, 1935.

Based on lives established by
California Railroad Commission
5% Sinking Fund Method.

Acct. No.		Capital	Life Years	Annual Depreciation
313.	Hydraulic P. P. Structures:			
.1	Operators Cottages	17,711.23	(.01505)*30	266.55
.2	Office Bldg., School, etc.	16,381.72	30	246.54
.3	Refrigeration Plant	1,569.10	(.07950) 10	124.74
.4	Power House Bldg.....	311,488.84	(.00827) 40	2,576.01
.5	Camp Water Supply.....	6,056.09	(.04634) 15	280.64
314.	Reservoir Dam and			
	Intake	3,892,928.63	(.00478) 50	18,607.72
317.	Penstocks	214,808.79	50	1,026.79
319.	Water Wheels and			
	Turbines	154,586.87	(.01107) 35	1,711.28
320.	Electrical Equipment	416,914.69	35	4,615.25
323.	Misc. Power Plant Equip.	7,384.75	(.01505) 30	111.14
382.	Communication System Tel.	661.06	(.04634) 15	30.63
		<hr/>		<hr/>
		\$5,040,391.77		\$29,597.29
	Less Reservoir and Dam	3,892,928.63		18,607.72
		<hr/>		<hr/>
		\$1,147,563.14		\$10,989.57

Sinking Funds may be invested:

1. In addition to capital;
2. In purchase of own bonds;
3. In purchase of other bonds.

*Figures in parentheses were written in red ink on original copy.

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MERCED IRRIGATION DISTRICT DATA USED IN STUDY

1 600 second feet—31 day month = 98 400 acre feet.

1 600 second feet—30 day month = 95 200 acre feet.

1 600 second feet—29 day month = 92 000 acre feet.

1 600 second feet—28 day month = 88 800 acre feet.

31 250 Kw continuous for one year of 8 760 hrs
= 273 750 000 Kw-hrs.

31 250 Kw at 80% load factor for one year =
219 000 000 Kw-hrs.

31 250 Kw at 80% load factor for 31 day month
= 1 860 000 Kw-hrs.

31 250 Kw at 80% load factor for 30 day month
= 1 800 000 Kw-hrs.

31 250 Kw at 80% load factor for 29 day month
= 1 740 000 Kw-hrs.

31 250 Kw at 80% load factor for 28 day month
= 1 680 000 Kw-hrs.

1 Cubic foot per second = 1.9835 acre feet per
24 hours.

1 Cubic foot per second = 724 acre feet per year.

Elevation Head

Center line of penstock Inlet.....	485.00	
Center line of penstock Outlet	420.00	
40 000 acre feet capacity	561.00	141
289 000 acre feet capacity	710.00	290
174 000 acre feet capacity	660.00	240

[731]

MERCED IRRIGATION DISTRICT

Month 1902	Available Water Supply Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet					
Jan.	14,511	14,511		.....	.....	.....	.....	.....
Feb.	41,597	41,597	14,511	.....	.....	.....	.....	.....
Mar.	84,054	-14,346	56,108	572	.....	98,400	94	9,249,600
Apr.	146,202	51,002	41,762	588	.....	95,200	109	10,376,800
May	233,345	134,945	92,764	655	.....	98,400	174	17,121,600
June	186,962	61,291	227,709	698	30,471	95,200	193	18,373,600
July	29,576	-68,824	289,000	675	.....	98,400	186	18,302,400
Aug.	11,744	-86,656	220,176	662	.....	98,400	179	17,613,600
Sept.	5,236	-89,964	133,520	606	.....	95,200	127	12,090,400
Oct.	5,534	- 2,466	43,556	563	.....	8,000	86	688,000
Nov.	14,638	6,638	41,090	566	.....	8,000	88	704,000
Dec.	18,631	3,631	47,728	571	.....	15,000	93	1,395,000
	792,030		51,359		30,471	710,200		105,915,000

105,915,000 Kw-h @ \$.0045=\$476,618.00

W.S.P. #81
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Merced Falls
D.A.—1090 S.M.

[732]

MERCED IRRIGATION DISTRICT

Month 1903	Available Water Supply Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet					
			51,359					
Jan.	68,743	- 1,257		577	.....	70,000	99	6,930,000
			50,102					
Feb.	61,369	- 8,631		567	.....	70,000	89	6,230,000
			41,471					
Mar.	119,901	21,501		573	.....	98,400	95	9,348,000
			62,972					
Apr.	171,193	75,993		615	.....	95,200	137	13,042,400
			138,965					
May	265,626	150,035		678	17,191	98,400	187	18,400,810
			289,000					
June	175,180	.....		710	79,980	95,200	193	18,373,600
			289,000					
July	42,795	-55,605		700	.....	98,400	192	18,892,800
			233,395					
Aug.	22,689	-75,711		670	.....	98,400	183	18,007,200
			157,684					
Sept.	16,602	-78,598		628	.....	95,200	150	14,280,000
			79,086					
Oct.	16,909	-58,091		572	.....	75,000	94	8,930,000
			20,995					
Nov.	22,671	19,671		547	.....	3,000	70	210,000
			40,666					
Dec.	22,689	19,689		572	.....	3,000	94	282,000
			60,355					
	1,006,367				97,171	900,200		132,926,810

132,926,810 Kw-h @ \$.0045=\$598,170

W.S.P. #100
Pg-293
Merced Falls
D.A.—1090S.M.

MERCED IRRIGATION DISTRICT

Month 1904	Available Water Supply Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet					
Jan.	11,621	-13,379	60,355	575	.....	25,000	97	2,425,000
Feb.	71,326	- 3,674	46,976	565	.....	75,000-	88	6,600,000
Mar.	139,269	40,869	43,302	585	.....	98,400	107	10,528,800
Apr.	161,137	65,937	84,171	626	.....	95,200	148	14,089,600
May	356,444	138,892	150,108	682	119,152	98,400	189	18,597,600
June	195,888	.....	289,000	710	100,688	95,200	193	18,373,600
July	55,892	-42,508	289,000	704	.....	98,400	193	18,991,200
Aug.	23,365	-75,035	246,492	678	.....	98,400	187	18,400,800
Sept.	19,339	-75,861	171,457	638	.....	95,200	160	15,232,000
Oct.	92,908	- 5,492	95,596	610	.....	98,400	132	12,988,800
Nov.	28,026	-41,974	90,104	592	.....	70,000	114	7,980,000
Dec.	22,197	2,197	48,130	572	.....	20,000	94	1,880,000
	<u>1,177,412</u>		<u>50,327</u>		<u>219,840</u>	<u>967,600</u>		<u>146,087,400</u>

146,087,400 Kw-h @ \$.0045=\$657,393.00

W.S.P. #134
Pg-165
Merced Falls
D.A.—1090 S.M.

MERCED IRRIGATION DISTRICT

Month 1905	Available Water Supply Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet					
			50,327					
Jan.	21,210	1,210		572	.....	20,000	94	1,880,000
			51,537					
Feb.	61,370	-13,630		566	.....	75,000	88	6,600,000
			37,907					
Mar.	109,100	10,700		564	.....	98,400	86	8,462,400
			48,607					
Apr.	122,000	26,800		583	.....	95,200	105	9,996,000
			75,407					
May	203,900	105,500		634	.....	98,400	156	15,350,400
			180,907					
June	177,300	82,100		685	.....	95,200	189	17,992,800
			263,007					
July	49,440	-48,960		690	.....	98,400	191	18,794,400
			214,047					
Aug.	9,715	-88,685		658	.....	98,400	176	17,318,400
			125,362					
Sept.	3,735	-76,265		604	.....	80,000	126	10,080,000
			49,097					
Oct.	3,628	628		572	.....	3,000	94	282,000
			49,725					
Nov.	3,951	951		572	.....	3,000	94	282,000
			50,676					
Dec.	5,995	2,995		573	.....	3,000	95	285,000
			53,671					
	771,344					768,000		107,323,400

107,323,400 Kw-h @ \$.0045=\$482,955.00

W.S.P. #177
Pg-205
Merced Falls
D.A.—1090 S.M.

MERCED IRRIGATION DISTRICT

Month 1906	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
Jan.	113,000	14,600	53,671	583	.....	98,400	105	10,332,000
Feb.	58,900	-26,100	68,271	578	.....	85,000	100	8,500,000
Mar.	287,000	188,600	42,171	640	.....	98,400	162	15,940,800
Apr.	208,000	58,229	230,771	678	54,571	95,200	187	17,802,400
May	402,000	.....	289,000	710	303,600	98,400	193	18,991,200
June	500,000	.....	289,000	710	404,800	95,200	193	18,373,600
July	385,000	.....	289,000	710	286,600	98,400	193	18,991,200
Aug.	58,300	-40,100	289,000	702	.....	98,400	193	18,991,200
Sept.	15,100	-80,100	248,900	674	.....	95,200	185	17,612,000
Oct.	7,500	-90,900	168,800	632	.....	98,400	154	15,153,600
Nov.	8,030	-31,970	77,900	584	.....	40,000	106	4,240,000
Dec.	45,200	- 4,800	45,930	565	.....	50,000	88	4,400,000
	<u>2,088,030</u>		41,130		<u>1,049,571</u>	<u>1,051,000</u>		<u>169,328,000</u>

169,328,000 Kw-h @ \$.0045=\$761,976.00

W.S.P. #213
Pg-161
Merced Falls
D.A.—1090 S.M.

MERCED IRRIGATION DISTRICT

Month 1907	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			41,130					
Jan.	125,000	26,600		576	.....	98,400	98	9,643,200
			67,730					
Feb.	117,000	28,200		600	.....	88,800	122	10,833,600
			95,930					
Mar.	459,000	193,070		668	167,530	98,400	182	17,908,800
			289,000					
Apr.	327,000	.....		710	231,800	95,200	193	18,373,600
			289,000					
May	392,000	.....		710	293,600	98,400	193	18,991,200
			289,000					
June	377,000	.....		710	281,800	95,200	193	18,373,600
			289,000					
July	213,000	.....		710	114,600	98,400	193	18,991,200
			289,000					
Aug.	48,700	-49,700		700	.....	98,400	192	18,892,800
			239,300					
Sept.	13,000	-82,200		671	.....	95,200	184	17,516,800
			157,100					
Oct.	8,300	-90,100		624	.....	98,400	146	14,366,400
			67,000					
Nov.	9,160	-20,840		578	.....	30,000	100	3,000,000
			46,160					
Dec.	18,900	8,900		572	10,000	94	940,000
			55,060					
	2,108,060				1,089,330	1,004,800		167,831,200

W.S.D. #251

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Merced Falls

D.A.—1090 S.M.

167,831,200 Kw-h @ \$.0045=\$755,240.00

[737]

MERCED IRRIGATION DISTRICT

Month 1908	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
Jan.	31,800	- 8,200	55,060	572	.....	40,000	94	3,760,000
Feb.	28,500	3,500	46,860	571	.....	25,000	93	2,325,000
Mar.	64,000	- 1,000	50,360	571	.....	65,000	93	6,045,000
Apr.	111,000	15,800	49,360	580	.....	95,200	102	9,710,400
May	123,000	24,600	65,160	595	.....	98,400	117	11,512,800
June	75,600	-19,600	89,760	600	.....	95,200	122	11,614,400
July	30,000	-10,000	70,160	585	.....	40,000	117	4,680,000
Aug.	12,500	-27,500	60,160	568	.....	40,000	90	3,600,000
Sept.	5,590	- 4,410	32,660	548	.....	10,000	71	710,000
Oct.	5,800	2,800	28,250	547	.....	3,000	70	210,000
Nov.	4,140	1,140	31,050	548	.....	3,000	71	213,000
Dec.	6,460	3,460	32,190	552	.....	3,000	75	225,000
	<u>498,390</u>		35,650		<u>.....</u>	<u>517,800</u>		<u>54,605,600</u>

W.S.P. #251

Pg-262

Merced Falls

D.A.—1090S.M.

54,605,600 Kw-h @ \$.0045=\$245,725.00

MERCED IRRIGATION DISTRICT

Month 1909	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
Jan.	228,000	129,600	35,650	615	.....	98,400	137	13,480,800
Feb.	179,000	90,200	165,250	678	.....	88,800	187	16,605,600
Mar.	84,800	-13,600	255,450	694	.....	98,400	191	18,794,400
Apr.	172,000	47,150	241,850	702	29,650	95,200	193	18,373,600
May	321,000	.....	289,000	710	222,600	98,400	193	18,991,200
June	354,000	.....	289,000	710	258,800	95,200	193	18,373,600
July	95,300	- 3,100	289,000	706	.....	98,400	193	18,991,200
Aug.	20,700	-77,700	285,900	694	.....	98,400	192	18,892,800
Sept.	8,210	-86,990	208,200	655	.....	95,200	174	16,564,800
Oct.	8,180	-71,820	121,210	604	.....	80,000	126	10,080,000
Nov.	31,600	- 8,400	44,390	566	.....	40,000	88	3,520,000
Dec.	103,000	4,600	40,990	564	.....	98,400	86	8,462,400
	<u>1,605,790</u>		<u>45,590</u>		<u>511,050</u>	<u>1,084,800</u>		<u>181,130,400</u>

W.S.P. #271

Pg-193

Merced Falls

D.A.—1090 S.M.

181,130,400 Kw-h @ \$.0045=\$815,087.00

MERCED IRRIGATION DISTRICT

Month 1910	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			45,590					
Jan.	139,000	40,600		586	.....	98,400	118	11,611,200
			86,190					
Feb.	54,100	-34,700		590	.....	88,800	112	9,954,560
			51,490					
Mar.	119,000	20,600		582	.....	98,400	114	11,217,600
			72,090					
Apr.	239,000	143,800		644	.....	95,200	165	15,708,000
			215,890					
May	250,000	73,110		695	78,490	98,400	192	18,892,800
			289,000					
June	80,900	-14,300		706	.....	95,200	193	18,373,600
			274,700					
July	24,000	-74,400		670	.....	98,400	183	18,007,200
			200,300					
Aug.	8,120	-90,280		650	.....	98,400	170	16,728,000
			110,020					
Sept.	11,400	-58,600		594	.....	70,000	116	8,120,000
			51,420					
Oct.	10,500	- 4,500		572	.....	15,000	94	1,410,000
			46,920					
Nov.	11,300	8,300		572	.....	3,000	94	282,000
			55,220					
Dec.	17,800	- 2,200		573	.....	20,000	95	1,900,000
			53,020					
	965,120				78,490	879,200		132,204,960

W.S.P. #291

Pg. 85

Merced Falls

D.A.—1090 S.M.

132,204,960 Kw-h @ \$.0045=\$594,922

[740]

MERCED IRRIGATION DISTRICT

Month 1911	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			53,020					
Jan.	271,000	172,600		629	.....	98,400	160	15,744,000
			225,620					
Feb.	136,000	47,200		696	.....	88,800	192	17,049,600
			272,820					
Mar.	357,000	19,180		704	242,420	98,400	193	18,991,200
			289,000					
Apr.	253,000	.....		710	157,800	95,200	193	18,373,600
			289,000					
May	339,000	.....		710	240,600	98,400	193	18,991,200
			289,000					
June	465,000	.....		710	369,800	95,200	193	18,373,600
			289,000					
July	212,000	.....		710	113,600	98,400	193	18,991,200
			289,000					
Aug.	34,900	-63,500		698	.....	98,400	192	18,892,800
			225,500					
Sept.	12,400	-82,800		675	.....	95,200	186	17,707,200
			142,700					
Oct.	10,300	-59,700		624	.....	70,000	146	10,220,000
			83,000					
Nov.	10,500	- 4,500		604	.....	15,000	126	1,890,000
			78,500					
Dec.	9,900	- 5,100		595	.....	15,000	117	1,755,000
			73,400					
	2,111,000				1,124,220	966,440		176,979,400

W.S.P. #311

Pg. 97

Merced Falls

D.A.—1090 S.M.

176,974,400 Kw-h @ \$.0045=\$796,407.00

[741]

MERCED IRRIGATION DISTRICT

Month 1912	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			73,400					
Jan.	16,100	- 3,900		592	.....	20,000	113	2,260,000
			69,500					
Feb.	14,600	-15,400		582	.....	30,000	104	3,120,000
			54,100					
Mar.	37,100	- 2,900		574	.....	40,000	96	3,840,000
			51,200					
Apr.	46,100	-13,900		565	.....	60,000	87	5,220,000
			37,300					
May	154,000	55,600		584	.....	98,400	116	11,414,400
			92,900					
June	172,000	76,800		635	.....	95,200	157	14,946,400
			169,700					
July	29,600	-68,800		638	.....	98,400	159	15,645,600
			100,900					
Aug.	9,590	-40,410		600	.....	50,000	122	6,100,000
			60,490					
Sept.	5,190	-24,810		571	.....	30,000	94	2,820,000
			35,680					
Oct.	4,060	1,060		555	.....	3,000	78	234,000
			36,740					
Nov.	7,740	4,740		564	.....	3,000	87	261,000
			41,480					
Dec.	5,460	2,460		562	.....	3,000	84	252,000
			43,940					
	501,540				.....	531,000		66,113,400

W.S.P. 331 & 361

Pgs.-176-177

Merced Falls

D.A.—1090 S.M.

66,113,400 Kw-hr @ \$.0045=\$297,510

MERCED IRRIGATION DISTRICT

Month 1913	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
Jan.	10,200	5,200	43,940	568	.....	5,000	91	455,000
Feb.	11,600	6,600	49,140	574	.....	5,000	96	480,000
Mar.	22,200	- 7,800	55,740	574	.....	30,000	96	2,880,000
Apr.	73,200	3,200	47,940	571	.....	70,000	93	6,510,000
May	148,000	49,600	51,140	595	.....	98,400	117	11,512,800
June	86,300	- 8,900	100,740	612	.....	95,200	113	12,661,600
July	34,400	-35,600	91,840	595	.....	70,000	117	8,190,000
Aug.	22,900	- 7,100	56,240	574	.....	30,000	96	2,880,000
Sept.	14,800	-10,200	49,140	565	.....	25,000	87	2,175,000
Oct.	3,040	40	38,940	560	.....	3,000	83	249,000
Nov.	6,130	3,130	38,980	561	.....	3,000	84	252,000
Dec.*	5,730	2,730	42,110	564	.....	3,000	87	261,000
	438,500		44,840		.....	437,600		48,506,400

W.S.P. #361

Pg.-177

Merced Falls

D.A.—1090

W.S.P. #391

*Figure Estimated

48,506,400 Kw-hr @ \$.0045=\$218,279

MERCED IRRIGATION DISTRICT

Month 1914	Available Water Supply Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet					
Jan. *	30,070	70	44,840	565	.....	30,000	87	2,610,000
Feb. *	27,820	- 2,180	44,910	564	.....	30,000	87	2,610,000
Mar. *	89,900	8,500	42,730	560	.....	98,400	83	8,167,200
Apr. *	161,800	66,600	34,230	588	.....	95,200	111	10,567,200
May *	430,000	188,170	100,830	670	143,430	98,400	183	18,007,200
June *	386,000	.....	289,000	710	290,800	95,200	193	18,373,600
July *	200,800	.....	289,000	710	102,400	98,400	193	18,991,200
Aug. *	59,200	-39,200	289,000	702	.....	98,400	193	18,991,200
Sept. *	9,430	-85,770	249,800	675	.....	95,200	185	17,612,000
Oct. *	5,440	-92,960	164,030	657	.....	98,400	176	17,318,400
Nov. *	5,830	-14,170	71,070	585	.....	20,000	107	2,140,000
Dec. *	2,800	- 200	56,900	580	.....	3,000	102	306,000
	<u>1,409,030</u>		<u>56,700</u>		<u>536,630</u>	<u>860,600</u>		<u>135,694,000</u>

No record of flow available

* Figures estimated

135,694,000 Kw-hr @ \$.0045=\$610,623.00

[744]

MERCED IRRIGATION DISTRICT

Month 1915	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water					
			56,700						
Jan. *	8,670	-11,330		572	.....		20,000	94	1,880,000
			45,370						
Feb. *	23,320	3,320		569	.....		20,000	92	1,840,000
			48,690						
Mar. *	55,520	-14,480		562	.....		70,000	84	5,880,000
			34,210						
Apr. *	212,700	117,500		610	.....		95,200	132	12,566,400
			151,710						
May *	259,200	137,290		682	23,510		98,400	188	18,499,200
			289,000						
June *	441,140	.....		710	345,940		95,200	193	18,373,600
			289,000						
July *	216,560	.....		710	118,160		98,400	193	18,991,200
			289,000						
Aug. *	36,430	-61,970		698	.....		98,400	193	18,991,200
			227,030						
Sept. *	12,280	-82,920		665	.....		95,200	180	17,136,000
			144,110						
Oct. *	4,960	-93,440		614	.....		98,400	136	13,382,400
			50,670						
Nov. *	4,340	1,340		572	.....		3,000	94	282,000
			52,010						
Dec.	13,900	- 6,100		571	.....		20,000	93	1,860,000
			45,910						
	1,289,020				487,610		812,200		129,682,000

No record of flow available until Dec. 1, 1915

W.S.P. #441

Pg.-133

Exchequer

D.A.—1090 S.M.

* Figures estimated

129,682,000 Kw-hr @ \$.0045=\$583,569.00

MERCED IRRIGATION DISTRICT

Month 1916	Available Water Supply Acre Feet	Lake McClure Storage		Average Elev. of Water	Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet					
			45,910					
Jan.	161,000	62,600	108,510	596	.....	98,400	118	11,611,200
Feb.	114,000	22,000	130,510	630	.....	92,000	152	13,984,000
Mar.	212,000	113,600	244,110	665	.....	98,400	180	17,712,000
Apr.	253,000	44,890	289,000	702	112,910	95,200	193	18,373,600
May	312,000	.....	289,000	710	213,600	98,400	193	18,991,200
June	277,000	.....	289,000	710	181,800	95,200	193	18,373,600
July	77,500	-20,900	268,100	706	.....	98,400	193	18,991,200
Aug.	17,800	-80,600	187,500	685	.....	98,400	190	18,696,000
Sept.	8,450	-86,750	100,750	644	.....	95,200	165	15,708,000
Oct.	30,600	-67,800	32,950	588	.....	98,400	111	10,922,400
Nov.	15,900	12,900	45,850	560	.....	3,000	83	249,000
Dec.	25,400	10,400	56,250	572	.....	15,000	94	1,410,000
	<u>1,504,650</u>				<u>508,310</u>	<u>986,000</u>		<u>165,022,200</u>

W.S.P. #441
Pg.-133
Exchequer
D.A.—1020

166,022,200 Kw-hr @ \$.0045=\$742,600.00

MERCED IRRIGATION DISTRICT

Month 1917	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
Jan.	27,100	-12,900	56,250	572	.....	40,000	93	3,720,000
Feb.	159,000	70,200	43,350	598	.....	88,800	121	10,744,800
Mar.	65,800	-32,600	113,550	613	.....	98,400	135	13,284,000
Apr.	129,000	33,800	80,950	613	.....	95,200	135	12,852,000
May	234,000	135,600	114,750	664	.....	98,400	179	17,613,600
June	339,000	38,650	250,350	703	205,150	95,200	193	18,373,600
July	73,800	-24,600	289,000	705	.....	98,400	193	18,991,200
Aug.	18,100	-80,300	264,400	684	.....	98,400	189	18,597,600
Sept.	7,440	-87,760	184,100	641	.....	85,200	162	15,422,400
Oct.	4,760	-45,240	96,340	595	.....	50,000	117	5,850,000
Nov.	5,110	- 4,890	51,100	571	.....	10,000	93	930,000
Dec.	6,210	1,210	46,210	568	.....	5,000	92	460,000
	<u>1,069,320</u>		47,420		<u>205,150</u>	<u>873,000</u>		<u>136,839,200</u>

W.S.D. #461
Pg.-134
Exchequer
D.A.—1020

136,839,200 Kw-hr @ \$.0045=\$615,776

[747]

MERCED IRRIGATION DISTRICT

Month 1918	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			47,420					
Jan.	6,150	1,150		570	.....	5,000	93	465,000
			48,570					
Feb.	44,400	-15,600		562	.....	60,000	85	5,100,000
			32,970					
Mar.	186,000	87,600		596	.....	98,400	108	10,627,200
			120,570					
Apr.	139,000	43,800		642	.....	95,200	164	15,612,800
			164,370					
May	196,000	97,600		679	.....	98,400	187	18,400,800
			261,970					
June	195,000	27,030		704	72,770	95,200	193	18,373,600
			289,000					
July	29,600	-68,800		697	.....	98,400	192	18,892,800
			220,200					
Aug.	6,390	-92,010		660	.....	98,400	178	17,515,200
			128,190					
Sept.	11,800	-83,400		604	.....	95,200	126	11,995,200
			44,790					
Oct.	32,000	12,000		572	.....	20,000	94	1,880,000
			56,790					
Nov.	14,900	4,900		581	.....	10,000	103	1,030,000
			61,690					
Dec.	15,200	5,200		586	.....	10,000	108	1,080,000
			66,890					
	876,440				72,770	784,200		120,972,600

W.S.P. #481
Pg.-131
Exchequer
D.A.—1020

120,972,600 Kw-hr @ \$.0045=\$544,377.00

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MERCED IRRIGATION DISTRICT

Month 1919	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			66,890					
Jan.	12,100	- 7,900		585	.....	20,000	107	2,140,000
			58,990					
Feb.	47,400	7,400		585	.....	40,000	107	4,280,000
			66,390					
Mar.	70,100	-28,300		575	.....	98,400	97	9,544,800
			38,090					
Apr.	135,000	39,800		580	.....	95,200	102	9,710,400
			77,890					
May	274,000	175,600		655	.....	98,400	174	17,121,600
			253,490					
June	61,300	-33,900		690	.....	95,200	191	18,183,200
			219,590					
July	13,000	-85,400		662	.....	98,400	179	17,613,600
			134,190					
Aug.	3,760	-86,240		608	.....	90,000	130	11,700,000
			47,950					
Sept.	2,300	- 7,700		566	.....	10,000	88	880,000
			40,250					
Oct.	3,380	380		561	.....	3,000	84	252,000
			40,630					
Nov.	3,600	600		562	.....	3,000	90	270,000
			41,230					
Dec.	11,600	8,600		568	.....	3,000	91	273,000
			49,830					
	637,540				.....	654,600		91,968,600

W.S.P. #511
Pg.-206
Exchequer
D.A.—1020

91,968,600 Kw-hr @ \$.0045=\$413,859.00

MERCED IRRIGATION DISTRICT

Month 1920	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			49,830					
Jan.	10,400	400		572	.....	10,000	94	940,000
			50,230					
Feb.	12,900	- 2,100		571	.....	15,000	93	1,395,000
			48,130					
Mar.	80,500	500		570	.....	80,000	92	7,360,000
			48,630					
Apr.	120,000	24,800		583	.....	95,200	105	9,996,000
			73,430					
May	259,000	160,600		649	.....	98,400	170	16,728,000
			234,030					
June	147,000	51,800		699	.....	95,200	192	18,278,400
			285,830					
July	24,300	-74,100		694	.....	98,400	192	18,892,800
			211,730					
Aug.	8,550	-89,850		656	.....	98,400	175	17,220,000
			121,880					
Sept.	4,570	-80,430		600	.....	85,000	122	10,370,000
			41,450					
Oct.	13,800	8,800		568	.....	5,000	90	450,000
			50,250					
Nov.	20,000	.....		572	.....	20,000	94	1,880,000
			50,250					
Dec.	31,900	- 3,100		571	.....	35,000	93	3,255,000
			47,150					
	732,920				.....	735,600		106,765,200

W.S.P. #511
Pg.-206
Exchequer
D.A.—1020

106,765,200 Kw-hr @ \$.0045=\$480,443.00

[750]

MERCED IRRIGATION DISTRICT

Month 1921	Available Water Supply Acre Feet	Lake McClure Storage			Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
		Gain or Loss Acre Feet	Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			47,150					
Jan.	99,000	600		569	.....	98,400	91	8,954,400
			47,750					
Feb.	78,900	- 9,900		564	.....	88,800	87	7,725,600
			37,850					
Mar.	107,000	8,600		564	.....	98,400	87	8,560,800
			46,450					
Apr.	142,000	46,800		582	.....	95,200	104	9,900,800
			93,250					
May	245,000	146,600		654	.....	98,400	173	17,023,200
			239,850					
June	215,000	49,150		700	70,650	95,200	192	18,278,400
			289,000					
July	46,100	-52,300		700	.....	98,400	192	18,892,800
			236,700					
Aug.	8,550	-89,850		668	.....	98,400	182	17,908,800
			146,850					
Sept.	4,210	-90,990		616	.....	95,200	138	13,137,600
			55,860					
Oct.	3,120	- 6,880		575	.....	10,000	97	970,000
			48,980					
Nov.	3,480	480		571	.....	3,000	93	279,000
			49,460					
Dec.	44,000	14,000		578	.....	30,000	100	3,000,000
			63,460					
	996,360				70,650	909,400		124,631,400

W.S.P. #531
Pg.-148
Exchequer
D.A.—1020

124,631,400 Kw-hr @ \$.0045 = 560,841.00

MERCED IRRIGATION DISTRICT

Month 1922	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			63,460					
Jan.	40,100	-29,900		570	.....	70,000	93	6,510,000
			33,560					
Feb.	163,000	74,200		582	.....	88,800	104	9,235,200
			107,760					
Mar.	117,000	18,600		627	.....	98,400	149	14,661,600
			126,360					
Apr.	124,000	28,800		642	.....	95,200	162	15,422,400
			155,160					
May	416,000	133,840		683	183,760	98,400	189	18,597,600
			289,000					
June	400,000	.....		710	304,800	95,200	193	18,373,600
			289,000					
July	86,100	-12,300		708	.....	98,400	193	18,991,200
			276,700					
Aug.	15,500	-82,900		689	.....	98,400	190	18,696,000
			193,800					
Sept.	6,070	-89,130		646	.....	95,200	167	15,898,400
			104,670					
Oct.	5,790	-49,210		600	.....	55,000	122	6,710,000
			55,460					
Nov.	16,000	- 4,000		575	.....	20,000	97	1,940,000
			51,460					
Dec.	58,300	18,300		582	.....	40,000	104	4,160,000
			69,760					
	1,447,860				488,560	953,000		149,196,000

W.S.P. #551
Pg.-205
Exchequer
D.A.—1020

149,196,000 Kw-hr @ \$.0045=\$671,382

MERCED IRRIGATION DISTRICT

Month 1923	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			69,760					
Jan.	65,800	15,800	85,560	598	.....	50,000	120	6,000,000
Feb.	50,200	- 9,800	75,760	600	.....	60,000	124	7,440,000
Mar.	55,800	-42,600	33,160	576	.....	98,400	98	9,643,200
Apr.	158,000	62,800	95,960	586	.....	95,200	108	10,281,600
May	288,000	189,600	285,560	668	.....	98,400	182	17,908,800
June	155,000	3,440	289,000	709	56,360	95,200	193	18,373,600
July	66,400	-32,000	257,000	704	.....	98,400	193	18,991,200
Aug.	13,400	-85,000	172,000	680	.....	98,400	188	18,499,200
Sept.	9,280	-85,920	86,080	635	.....	95,200	157	14,946,400
Oct.	13,200	- 1,800	84,280	604	.....	15,000	126	1,890,000
Nov.	9,040	4,040	88,320	604	.....	5,000	126	630,000
Dec.	7,930	- 2,070	86,250	605	.....	10,000	127	1,270,000
	892,050				56,360	819,200		125,874,000

W.S.P. #571

Pg.-201

Exchequer

D.A. 1020

125,874,000 Kw-hr @ \$.0045=\$566,433.00

MERCED IRRIGATION DISTRICT

Month 1924	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			86,250					
Jan.	10,200	200	86,450	604	.....	10,000	126	1,260,000
Feb.	15,000	- 5,000	81,450	603	.....	20,000	125	2,500,000
Mar.	19,300	-20,700	60,750	592	.....	40,000	114	4,560,000
Apr.	67,200	2,200	62,950	583	.....	65,000	115	7,475,000
May	91,000	- 7,400	55,550	580	.....	98,400	102	10,036,800
June	12,600	- 7,400	48,150	575	.....	20,000	97	1,940,000
July	3,770	- 6,230	41,920	567	.....	10,000	89	890,000
Aug.	1,840	- 8,160	33,760	557	.....	10,000	80	800,000
Sept.	1,220	- 8,780	24,980	546	.....	10,000	68	680,000
Oct.	4,660	1,660	26,640	540	.....	3,000	63	189,000
Nov.	21,500	18,500	45,140	556	.....	3,000	79	237,000
Dec.	22,800	19,800	64,940	578	.....	3,000	100	300,000
	<u>271,090</u>				.....	<u>298,400</u>		<u>30,867,800</u>

W.S.P. #591
Pg.-257
Exchequer
D.A.—1020

30,867,800 Kw-hr @ \$.0045=\$138,905

[754]

MERCED IRRIGATION DISTRICT

Month 1925	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
			64,940					
Jan.	21,200	-18,800		578	.....	40,000	100	4,000,000
			46,140					
Feb.	106,000	26,000		581	.....	80,000	103	8,240,000
			72,140					
Mar.	77,500	-20,900		586	.....	98,400	108	10,627,200
			51,240					
Apr.	180,000	84,800		611	.....	95,200	133	12,661,600
			136,040					
May	261,000	152,960		679	9,640	98,400	187	18,400,800
			289,000					
June	147,000	.....		710	51,800	95,200	193	18,373,600
			289,000					
July	48,900	-49,500		701	.....	98,400	193	18,991,200
			239,500					
Aug.	15,200	-83,200		672	.....	98,400	184	18,105,600
			156,300					
Sept.	4,570	-90,630		623	.....	95,200	145	13,804,000
			65,670					
Oct.	7,930	- 70		587	.....	8,000	109	872,000
			65,600					
Nov.	8,150	5,150		589	.....	3,000	111	333,000
			70,750					
Dec.	11,700	6,700		594	.....	5,000	116	580,000
			77,450					
	889,150				61,440	815,200		124,989,000

W.S.P. #611
Pg.-183
Exchequer
D.A.—1020

124,989,000 Kw-hr @ \$.0045=\$562,451

[755]

MERCED IRRIGATION DISTRICT

Month 1926	Available Water Supply Acre Feet	Gain or Loss Acre Feet	Lake McClure Storage		Spill Over Capacity of Power Plant Acre Feet	Draft Through Power Plant Acre Feet	Factor Kw-h/Ac. Ft. From Chart E-16	Kw-hr Generation
			Total Water In Storage At end Month Acre Feet	Average Elev. of Water				
Jan.	10,100	100	77,450	598	.....	10,000	120	1,200,000
Feb.	51,500	11,500	77,550	602	.....	40,000	125	5,000,000
Mar.	51,300	-47,100	89,050	587	.....	98,400	109	10,725,600
Apr.	204,000	108,800	41,950	612	.....	95,200	134	12,756,800
May	167,000	68,600	150,750	666	.....	98,400	181	17,810,400
June	47,500	-47,700	219,350	670	.....	95,200	183	17,421,600
July	12,100	-86,300	171,650	635	.....	98,400	157	15,448,800
Aug.	3,170	-36,830	85,350	588	.....	40,000	110	4,400,000
Sept.	2,120	-17,880	48,520	560	.....	20,000	83	1,660,000
Oct.	2,560	- 440	30,640	547	.....	3,000	70	210,000
Nov.	29,300	26,300	30,200	565	.....	3,000	87	261,000
Dec.	24,600	4,600	56,500	581	.....	20,000	103	2,060,000
	605,250		61,100		.....	621,600		88,954,200

W.S.P. #631 W.S.P. #651
Pg. Pg.-135

Horseshoe Bend

D.A.—Not measured

88,954,200 Kw-hr @ \$.0045 = \$400,294.00

RESPONDENTS' EXHIBIT "DD-1"

was a supplement to Mr. Heinze's report, reading as follows: [757]

STUDY OF OPERATION OF EXCHEQUER
POWER PLANT

1902-1938

Merced Irrigation District [758]

Carl A. Heinze

Consulting Electrical Engineer

14th Floor Continental Building

408 South Spring Street

Los Angeles

MUtual 5757

Purpose:

The original study was made of the Merced Irrigation District for the purpose of showing what the results would have been of the operation of the Exchequer Power Plant had the District been formed and the dam and power house been completed during the year 1901. This would have enabled the District to start the storage of water in the reservoir at the beginning of the year 1902. This report sets forth the results of the operation of the plant for the years 1936, 1937 and 1938 to October 31st.

Basis:

The premises originally made was of the reservoir being empty, the equipment installed in the power

house at the Exchequer Dam and ready to operate as of January 1st, 1902. It was also assumed that the present existing contract between the Merced Irrigation District and the San Joaquin Light and Power Corporation for the sale of energy generated at the power house was in effect at the time and that the terms of the contract were identical to present conditions. The controlling demands of the water users below the reservoir were considered to take precedence over the requirements of water for power generation. The irrigation season was taken as the period from March to October inclusive. The maximum load on the plant based on the terms of the contract with the San Joaquin Light and Power Corporation was taken at 31,250 kilowatts at eighty (80) per cent daily load factor.

This factor or ratio of kilowatt hours to the number of acre feet of water passing through the plant was obtained from an analysis made of the District's actual operating results, for their history from 1927 to 1935 inclusive.

Sources:

The stream flows for the original study were all taken from the United States Geological Survey, Water Supply papers for the years from 1902 to 1935 inclusive, with the exception of the period from December 1913 to November 1915 inclusive. It was found that gauging stations were moved during this period but that [759] in every case new gauging stations were selected having approximately the

same drainage area. For this period therefore, assumptions were made based upon data in Bulletin No. 5 of the Division of Engineering and Irrigation of the State of California, as shown in Table No. 87 on page 232. The general summary, however, shows average values for the entire period with and without the flow in these two years. The records of the District were used for the period 1936 to 1938 inclusive.

Use:

The study was originally started on January 1st, 1902, with the reservoir empty. Water was allowed to store until sufficient was available to commence generation. From the average water in storage during the month, the average elevation of the water in the reservoir was determined from the capacity curve of the reservoir, as shown on Drawing C-3. With the average elevation of the water obtained, the factor, or ratio of kilowatt hours to acre feet, was then determined for that elevation. The draft through the power house was then multiplied by this factor and the total kilowatt hours for the month determined.

The gross annual revenue was obtained by multiplying the number of kilowatt hours by \$.0045, the rate in the contract with the San Joaquin Light and Power Corporation.

The operating expenses of the power plant were taken as \$21,500 representing the average of seven years taken from the District's records. Deprecia-

tion on the entire investment in power plant building, equipment, and appurtenant structures, exclusive of the reservoir and dam, was computed on both the straight line method as actually used and set up by the District and on the five per cent sinking fund method, with lives as used by the California Railroad Commission.

The original study showed that for the period 1902 to 1935 inclusive, using estimated figures for 1902 to 1926 inclusive, and actual figures for 1927 to 1935 inclusive, that the average gross income was approximately \$500,000 and that the net income was approximately \$450,000. [760]

The present study extends the time of operation to include the years 1936, 1937, and 1938, the last two months of the latter year being estimated.

This shows that the 37 year average from 1902 to 1938 inclusive, and the 35 year average, leaving out the two years 1914 and 1915 during which no definite records were available, clearly substantiates the values established in the first report. In fact, taking the last three years alone, due to their having been years of heavy rainfall the average values for gross and net revenue were over \$100,000 higher than for the 37 year average. [761]

SUMMARY
OF
ESTIMATED AND ACTUAL GROSS REVENUE
OPERATING EXPENSES AND NET INCOME
OF
MERCED IRRIGATION DISTRICT
FOR YEARS 1902 TO 1938

Straight Line Depreciation
(District's Method)
exclusive of Dam and Intake

Estimated

Year	Gross Revenue	Expense		Total Expense	Net Income
		Oper- ating	Depre- ciation		
1902	\$476,618	21,500	22,854	44,354	432,264
1903	598,170	21,500	22,854	44,354	553,816
1904	657,393	21,500	22,854	44,354	613,039
1905	482,955	21,500	22,854	44,354	438,601
1906	761,976	21,500	22,854	44,354	717,622
1907	755,240	21,500	22,854	44,354	710,886
1908	245,725	21,500	22,854	44,354	201,371
1909	815,087	21,500	22,854	44,354	770,733
1910	594,922	21,500	22,854	44,354	550,568
1911	796,407	21,500	22,854	44,354	752,053
1912	297,510	21,500	22,854	44,354	253,156
1913	218,270	21,500	22,854	44,354	173,925
1914*	610,623	21,500	22,854	44,354	566,269
1915*	583,569	21,500	22,854	44,354	539,216
1916	742,600	21,500	22,854	44,354	698,246
1917	615,776	21,500	22,854	44,354	571,422
1918	544,377	21,500	22,854	44,354	500,023
1919	413,859	21,500	22,854	44,354	369,505
1920	480,443	21,500	22,854	44,354	436,089
1921	560,841	21,500	22,854	44,354	516,487
1922	671,382	21,500	22,854	44,354	627,028
1923	566,433	21,500	22,854	44,354	522,079
1924	138,905	21,500	22,854	44,354	94,551
1925	562,451	21,500	22,854	44,354	518,097
1926	400,294	21,500	22,854	44,354	355,940

	Year	Gross Revenue	Expense		Net Income
			Oper- ating	Depre- ciation	
Actual	1927	569,650	26,406	22,854	49,260
	1928	485,757	25,302	22,854	48,156
	1929	296,412	23,837	22,854	46,691
	1930	308,931	22,000	22,854	44,854
	1931	95,917	17,378	22,854	40,232
	1932	605,630	20,947	22,854	43,801
	1933	316,924	19,221	22,854	42,075
	1934	191,936	15,989	22,854	38,843
	1935	551,114	22,185	22,854	45,038
	1936	584,429	20,768	22,854	43,622
	1937	602,009	21,046	22,854	43,900
	1938	730,559	21,715**	22,854	44,569
<hr/>					
Total	37 years	\$18,931,103	\$794,294	\$845,598	\$1,639,892
Average	37 years	511,651	21,467	22,854	44,321
Total	35 years	\$17,736,911	\$751,294	\$799,890	\$1,551,164
Average	35 years	506,769	21,467	22,854	44,320

* Available water supply estimated during 1914 and 1915

** 10 months actual—2 months estimated.

35 year total and average exclude years 1914 and 1915 during which no stream flow measurements are available.

[762]

SUMMARY
OF
ESTIMATED AND ACTUAL GROSS REVENUE
OPERATING EXPENSES AND NET INCOME
OF
MERCED IRRIGATION DISTRICT
FOR YEARS 1902 TO 1938

5% Sinking Fund Method
exclusive of Dam and Intake

Estimated

Year	Gross Revenue	Expense			Net Income
		Oper- ating	Depre- ciation	Total Expense	
1902	\$476,616	21,500	10,990	32,490	444,128
1903	598,170	21,500	10,990	32,490	565,680
1904	657,393	21,500	10,990	32,490	624,903
1905	482,955	21,500	10,990	32,490	450,465
1906	761,976	21,500	10,990	32,490	729,486
1907	755,240	21,500	10,990	32,490	722,750
1908	245,725	21,500	10,990	32,490	213,235
1909	815,087	21,500	10,990	32,490	782,597
1910	594,922	21,500	10,990	32,490	562,432
1911	796,407	21,500	10,990	32,490	763,917
1912	297,510	21,500	10,990	32,490	265,020
1913	218,279	21,500	10,990	32,490	185,789
1914*	610,623	21,500	10,990	32,490	578,133
1915*	583,569	21,500	10,990	32,490	551,079
1916	742,600	21,500	10,990	32,490	710,110
1917	615,776	21,500	10,990	32,490	583,286
1918	544,377	21,500	10,990	32,490	511,887
1919	413,859	21,500	10,990	32,490	381,369
1920	480,443	21,500	10,990	32,490	447,953
1921	560,841	21,500	10,990	32,490	528,351
1922	671,382	21,500	10,990	32,490	638,892
1923	566,433	21,500	10,990	32,490	533,943
1924	138,905	21,500	10,990	32,490	106,415
1925	562,451	21,500	10,990	32,490	529,961
1926	400,294	21,500	10,990	32,490	367,804

	Year	Gross Revenue	Expense			Net Income
			Oper- ating	Depre- ciation	Total Expense	
Actual	1927	569,650	26,406	10,990	37,396	532,254
	1928	485,757	25,302	10,990	36,292	449,465
	1929	296,412	23,837	10,990	34,827	261,585
	1930	308,931	22,000	10,990	32,990	275,941
	1931	95,917	17,378	10,990	28,368	67,549
	1932	605,630	20,947	10,990	31,937	573,693
	1933	316,924	19,221	10,990	30,211	286,713
	1934	191,936	15,989	10,990	26,979	164,957
	1935	551,114	22,185	10,990	33,175	517,939
	1936	584,429	20,768	10,990	31,758	552,671
	1937	602,009	21,046	10,990	32,036	569,973
	1938	730,559	21,715**	10,990	32,705	697,854
<hr/>						
Total	37 years	\$18,931,103	\$794,294	\$406,630	\$1,200,924	\$17,730,179
Average	37 years	511,651	21,467	10,990	32,457	479,194
<hr/>						
Total	35 years	\$17,736,911	\$751,294	\$384,650	\$1,135,944	\$16,600,967
Average	35 years	506,769	21,467	10,990	32,456	474,313

* Available water supply estimated during 1914 and 1915

** 10 months actual—2 months estimated.

35 year total and average exclude years 1914 and 1915 during which no stream flow measurements are available.

[763]

Carl A. Heinze
ANNUAL REPORT
OF
MERCED IRRIGATION DISTRICT
TO
FEDERAL POWER COMMISSION
October 1st—1930
September 30th—1931

II Tangible Fixed Capital

1. Production Capital

(b) Hydraulic power generation:

312	Hydraulic power plant land	
	(a) Land owned in fee or held under perpetual rights.....	\$ 6,379,466.38
	(b) Land held for a limited period	
313	Hydraulic power plant structures.....	353,206.98
314	Reservoirs, dams, and intakes.....	3,892,828.63
317	Forebays, penstocks and tail races.....	214,808.79
318	Production Roads and Trails.....	7,603.32
319	Water turbines and water wheels.....	154,586.87
320	Electric Equipment—hydro	416,914.69
323	Miscellaneous power plant equipment.....	7,384.75
382	Production Communication System.....	661.06
	Total hydro-power generation.....	\$11,427,461.47

Note: Capital charges have remained practically constant since completion of project, so that year 1931 is typical and unchanged to date.

[764]

Carl A. Heinze

Merced Irrigation District

OPERATING EXPENSES
AS SHOWN ON DISTRICT'S BOOKS

<u>Calendar Year</u>	<u>Annual Expense</u>	<u>Remarks</u>
1927	\$ 26,405.90	(Extra high account carrying over
1928	25,302.51	(from construction work
1929	23,837.02	
1930	22,000.18	
1931	17,378.54	(Expense low account lay-off—low
1932	20,947.49	(water
1933	19,221.40	
1934	15,988.69	(Expense low account time partially
1935	22,185.05	(chargeable to construction work
1936	20,768.18	
1937	21,045.54	
1938	21,715.00	(Ten months actual—two months (estimated
Total	\$256,795.50	

Annual average—\$21,400.00

DETAIL OF OPERATING EXPENSES
FOR YEAR 1937

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
731	Power House Superintendence.....	\$ 2,400.00
733	Station Labor	10,619.61
734	Miscellaneous Labor	4,990.12
735	Miscellaneous Supplies	1,634.79
746	Maintenance Production	
	Roads and Trails.....	144.80
747	Maintenance of water wheels and turbines	—
756	Production Rents	922.93
Sub-total		\$20,712.25
Add depreciation		333.29
Total expense		\$21,045.54

Taken from District's Books

11-4-38

[765]

Carl A. Heinze

Merced Irrigation District

DETAIL OF
CAPITAL INVESTMENT AND ANNUAL CHARGE TO DEPRECIATION RESERVE ON STRAIGHT LINE BASIS

Acct. No		Capital	Per Cent	Annual Depreciation
313.	Hydraulic P. P. Structures:			
.1	Operators Cottages	\$ 17,711.23	2	\$ 354.22
.2	Office Bldg. School, etc.....	16,381.72	8	1,310.54
.3	Refrigeration Plant	1,569.10	10	156.91
.4	Power House Bldg.....	311,488.84	1	3,114.89
.5	Camp Water Supply.....	6,056.09	2.5	151.40
314.	Reservoir Dam and Intake.....	3,892,828.63	1	38,928.29
317.	Penstocks	214,808.79	1.5	3,228.13
319.	Water Wheels and Turbine.....	154,586.87	2.5	3,864.67
320.	Electrical Equipment	416,914.69	2.5	10,422.87
323.	Misc. Power Plant Equipment.....	7,384.75	2.5	184.62
382.	Communication System Tel.....	661.06	10	66.11
		\$5,040,391.77		\$61,782.65
	Less Reservoir and Dam.....	3,892,828.63		38,928.29
		\$1,147,563.14		\$22,854.36

Taken from books of the District—2-4-36.

[766]

Carl A. Heinze

Merced Irrigation District

DETAIL OF

CAPITAL INVESTMENT AND ANNUAL CHARGE TO DEPRECIATION RESERVE AS OF DECEMBER 31, 1935

Based on lives established by
California Railroad Commission
5% Sinking Fund Method

Acct. No.		Capital	Life Years	Annual Depreciation
313.	Hydraulic P. P. Structures:			
.1	Operators Cottages	\$ 17,711.23	30	\$ 266.55
.2	Office Bldg., School, etc.....	16,381.72	30	246.54
.3	Refrigeration Plant	1,569.10	10	124.74
.4	Power House Building.....	311,488.84	40	2,576.01
.5	Camp Water Supply.....	6,056.09	15	280.64
314.	Reservoir Dam and Intake.....	3,892,828.63	50	18,607.72
317.	Penstocks	214,808.79	50	1,026.79
319.	Water Wheels and Turbines.....	154,586.87	35	1,711.28
320.	Electrical Equipment	416,914.69	35	4,615.25
323.	Miscellaneous Power Plant Equip- ment	7,384.75	30	111.14
382.	Communication System Tel.....	661.06	15	30.63
		<hr/>		<hr/>
		\$5,040,391.77		\$29,597.29
	Less Reservoir and Dam.....	3,892,828.63		18,607.72
		<hr/>		<hr/>
		\$1,147,563.14		\$10,989.57

Sinking Funds may be invested:

1. In addition to capital.
2. In purchase of own bonds.
3. In purchase of other bonds.

[767]

RESPONDENTS' EXHIBIT "EE"

POWER CONTRACT

This exhibit was a copy of the agreement dated February 21, 1924, between Merced Irrigation District and South San Joaquin Light and Power Corporation, and it provided that the district agreed to deliver and sell to the Power Company the entire electric output of the hydro-electric plant excepting such as might be required in the operation of the reservoir and plant. The power company agreed to accept and pay for such electric output.

The electric energy to be delivered and received was to be three phase, sixty cycle, alternating current and to be received by the power company at the transmission line terminal air switch at Exchequer plant; the power company agreed to have suitable high tension transmission lines and facilities adequate for receiving the electric energy, and that it would receive this energy with the total output possible from the water passing through the plant, either from storage or natural flow; it is further agreed that water passing through the power plant is to be used for irrigation when so desired by the district, and that the delivery of water to the power plant must be governed by irrigation requirements.

Paragraphs VI and VII of this agreement read as follows:

VI.

All power delivered and received pursuant to the terms of this agreement shall be paid for by Power

Company at the rate of four and one-half mills (\$.0045) per kilowatt hour, but if the storage reservoir herein referred to shall not within three years from the date hereof be constructed to a capacity of at least 250,000 acre feet, all electric energy thereafter delivered and received under the terms of this agreement shall be paid for at the rate of four and three tenths mills (\$.0043) per kilowatt hour, but when the said reservoir is constructed to a capacity of at [768] least 250,000 acre feet all electric energy thereafter delivered and received shall be paid for at the rate of four and one-half mills (\$.0045) per kilowatt hour.

VII.

All electric energy which shall be sold and purchased hereunder shall be paid for by Power Company on or before the 20th day of the calendar month next succeeding the calendar month in which such energy shall have been delivered.

Paragraph X provided:

This contract shall be and remain in full force and effect for the term of twenty (20) years from and after its date and the same may be renewed by Irrigation District for an additional term of twenty (20) years by giving one (1) year's notice of its intention so to do. [769]

RESPONDENTS' EXHIBIT "FF"

was a graph superimposed upon Petitioner's Exhibit 24, as follows: [770]

IN DEFAULT JANUARY 1, 1938:

BOND INTEREST	\$4,731,105
BOND PRINCIPAL	386,000
INTEREST ON REGISTERED COUPONS	712,589
TOTAL	\$5,829,694

1 INTEREST ON OUTSTANDING NONCONSENTING BONDS.

2 INTEREST ON RFC ACTUAL LOAN (\$756,721.50).

3 PRINCIPAL PAYMENTS ON MATURING NONCONSENTING BONDS.

4a RFC MATURITY REQUIREMENTS.

4b RFC RESERVE FUND REQUIREMENTS.

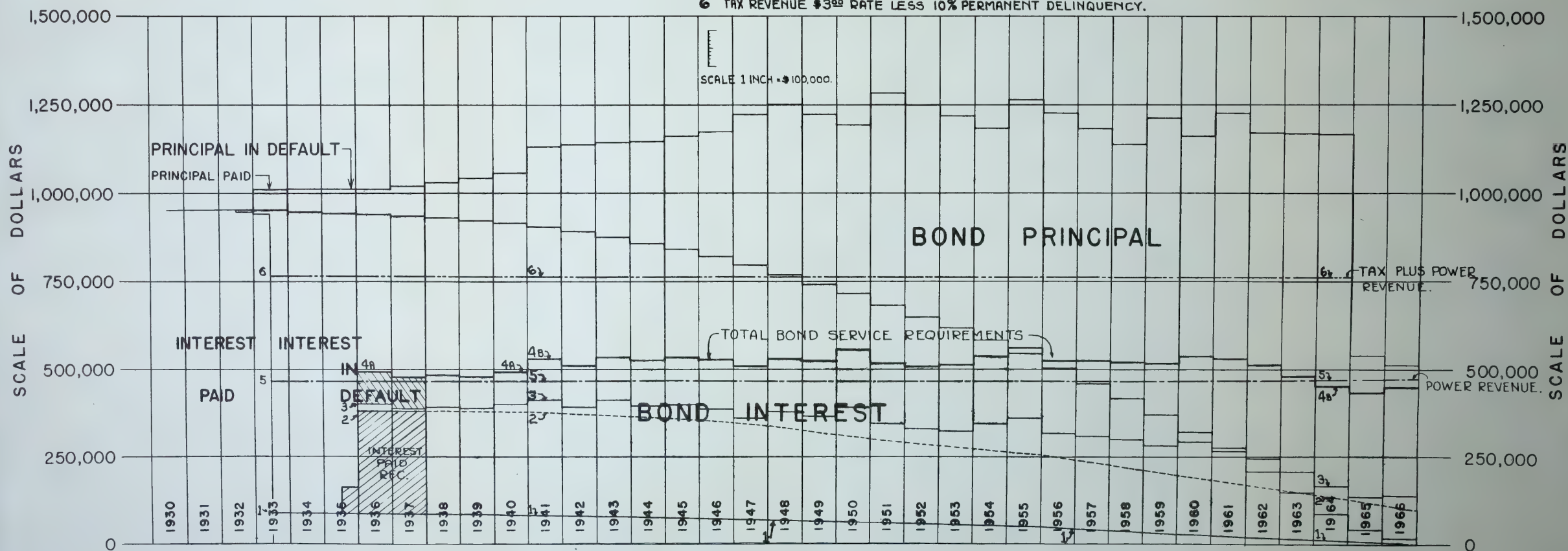
5 AVERAGE ANNUAL POWER INCOME ON 5% SINKING FUND BASIS.

6 TAX REVENUE \$3.00 RATE LESS 10% PERMANENT DELINQUENCY.

BOND SERVICE COSTS

AND DEFAULTS

MERCED IRRIGATION DISTRICT



RESPONDENTS' EXHIBIT "GG"

was a statement of bond maturity dates of matured bonds, as follows:

Jan. 1	R. F. C.	All Others	Total
1933		1,000—	1,000—
1934	59,000—	4,000—	63,000—
1935	56,000—	11,000—	67,000—
1936	53,000—	18,000—	71,000—
1937	80,000—	5,000—	85,000—
1938	86,000—	14,000—	100,000—
	334,000	53,000	\$387,000—

E. E. NEEL. [772]

RESPONDENTS' EXHIBIT "HH"

Order No. 54 of the California Districts Securities Commission approving feasibility of voting re-funding bonds:

REPORT

To the Board of Directors of the Merced Irrigation District:

Whereas, the Board of Directors of the Merced Irrigation District has by resolution dated February 11, 1935, made application to the Commission provided for by the California Districts Securities Commission Act, approved June 19, 1931 (Chapter 1073, Statutes of 1931), for an investigation and report upon the matters contemplated by Sections 32a, 32b, 32c, 32d and 32e of the California Irrigation District Act as amended; and

Whereas, the California Bond Certification Commission, the duties, powers, responsibilities and jurisdiction of which are by Section 15 of the said California Districts Securities Commission Act vested in the California Districts Securities Commission, has heretofore made investigations and reports upon the affairs of the said Merced Irrigation District, by which reports the bonds of the said district in the following principal amounts are entitled to certification by the State Controller as available for the purposes defined in Section 7 of the California Bond Certification Commission Act:

First Issue—First Division.....	\$3,120,000,
“ “ —Second Division.....	1,800,000,
“ “ —Third Division.....	1,320,000,
“ “ —Fourth Division.....	5,760,000,
Second Issue	3,250,000,
Third Issue	1,000,000;

and

Whereas, the Board of Directors of said Merced Irrigation District has caused an examination and various investigations to be made of the lands within the boundaries of said district and of the water, water rights, canals, reservoirs and other pertinent works of said district and deems it advisable to refund the present outstanding bonds in the following amounts:

First Issue—First Division.....	\$3,060,000,
“ “ —Second Division.....	1,800,000,
“ “ —Third Division.....	1,320,000,
“ “ —Fourth Division.....	5,760,000,
Second Issue	3,250,000,
Third Issue	1,000,000,

through a loan not to exceed \$8,600,000 from the Reconstruction Finance Corporation in accordance with the terms of a resolution of the Executive Committee of said Corporation adopted November 14, 1934; and

Whereas, said Board of Directors by resolution dated December 11, 1934, has duly accepted said loan; and

Whereas, the California Districts Securities Commission [773] has examined the said resolution of the Executive Committee of the Reconstruction Finance Corporation and other data submitted concerning the aforementioned plan of refunding and has made further examination of the district's development and is of the opinion that it is for the best interests of the Merced Irrigation District to refund its outstanding bonds in the aggregate principal amount of \$16,190,000 by accepting said loan from the Reconstruction Finance Corporation; and

Whereas, the California Districts Securities Commission has found and determined that the amount of the refunding bonds to be issued, together with all other outstanding bonds of the district, including bonds authorized but not sold, does not exceed sixty (60) per centum of the aggregate value of the water water rights, canals, reservoirs, reservoir sites, irrigation works and other property owned by the district and the reasonable value of the lands within the boundaries of the district and that said project is economically sound and feasible;

Now, Therefore, We, the undersigned members of the California Districts Securities Commission, do hereby make the following report to the Board of Directors of Merced Irrigation District approving the said refunding plan as set forth in said resolution of the Executive Committee of the Reconstruction Finance Corporation and authorizing said Board of Directors to proceed with said refunding plan:

(1) That the amount of the loan necessary to refund the outstanding bonds of Merced Irrigation District should not exceed Eight Million Six Hundred Thousand Dollars (\$8,600,000).

(2) That in our opinion Merced Irrigation District is justified in issuing refunding bonds in the principal amount of Eight Million Six Hundred Thousand Dollars (\$8,600,000.00), bearing interest at the rate of four (4) per centum per annum payable semi-annually, no part of the principal thereof to mature during the first five (5) years of the period of the loan, said bonds to mature thereafter in annual installments over a period of thirty-five (35) years in such amounts that the total of the sums payable for interest and principal shall be approximately equal each year.

(3) That said refunding bonds be issued to repay the Reconstruction Finance Corporation for equal amounts of loans provided by said Corporation for the payment of the said district's present outstanding bonds in accordance with Sections 32a, 32b, 32c, 32d and 32e

of the California Irrigation District Act and with Section 11 of the Act entitled "An act to authorize irrigation districts to co-operate and contract with the United States under the provisions of the Federal reclamation laws for a water supply, or the construction, operation or maintenance of works, including drainage works, or for the assumption by the district of indebtedness to the United States on account of district lands; and to provide the manner and method of payments to the United States under such contract, and for the apportionment of assessments, and the levy thereof, upon the lands of the district to secure revenue for such payments, and to provide for the judicial revenue and the determination of the validity of the proceedings in connection with such contract, and to provide for construction of works by the district; to [774] provide for the borrowing or procuring of money from the United States or any agency thereof and the entering into contracts, and/or the issuance of bonds, warrants or other evidence of indebtedness for the repayment thereof.", approved May 5, 1917, Statutes of 1917, page 243, and amended Statutes of 1929, page 208, and Statutes of 1933, page 2394.

(4) That the said Board of Directors is hereby authorized to make such expenditures as may be necessary to defray the cost of refunding said outstanding bonds in accordance with

the proposed plan, said expense being estimated at \$38,000.00.

(5) That the district is hereby authorized to enter into an agreement with said Reconstruction Finance Corporation which shall provide that the district will at all times levy and collect assessments in full compliance with the covenants of paragraphs 8(b) and 8(f) of said resolution of the Executive Committee of Reconstruction Finance Corporation and shall further provide that the District will set up a reserve as required by paragraph 8(f) of said resolution of the Executive Committee of Reconstruction Finance Corporation, and this Commission approves and agrees to the amounts of such assessments and the setting up of such reserve fund and further agrees that the amounts of such assessments will not by any action of this Commission be reduced below the amounts required by said resolution of the Executive Committee of Reconstruction Finance Corporation.

CALIFORNIA DISTRICT

SECURITIES COMMISSION,

(Signed) U. S. WEBB,
H. E. VOGEL,
M. J. DOWD,
F. W. RICHARDSON.

Attest:

(Signed) HARMON S. BONTE,
Executive Secretary.

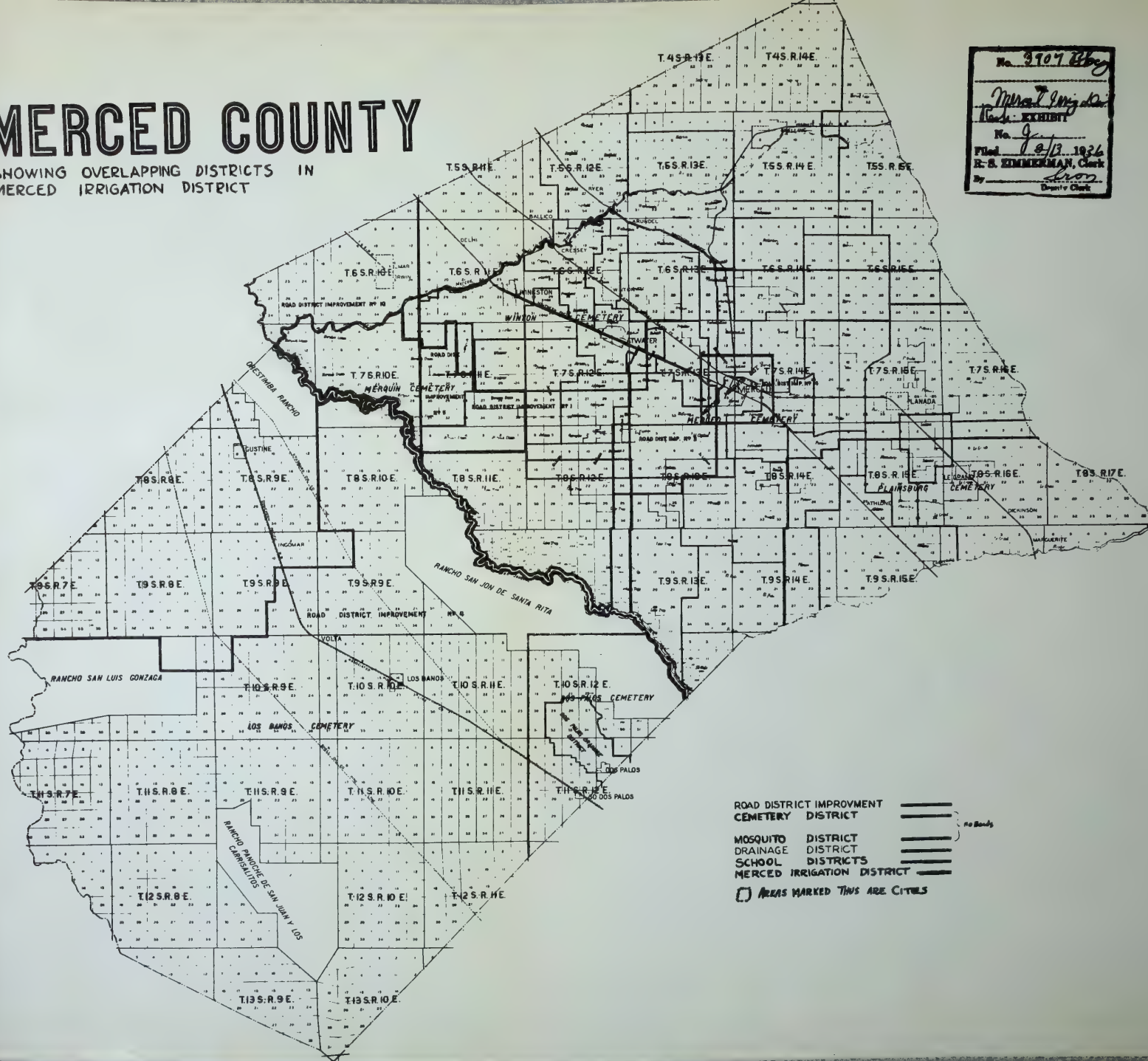
Dated at San Francisco, California, this 15th day
of February, 1935. [775]

RESPONDENTS' EXHIBIT No. II

GRAPH

This exhibit was a graph, being a map of Merced County, including the Merced Irrigation District, upon which were superimposed the road district, the cemetery district, the drainage district, and the mosquito district and the school districts, showing that these districts completely overlap the Merced Irrigation District. [776]

SHOWING OVERLAPPING DISTRICTS IN
MERCED IRRIGATION DISTRICT



RESPONDENTS' EXHIBIT "JJ"

was a table showing acreage in County, Merced
Irrigation District valuation, tax rates and bonds
outstanding, as follows: [777]

TAXES AND ASSESSMENTS

1,221,000 Ac.

	TOTAL ACREAGE	ACREAGE IN M. I. D.	TOTAL VALUATION	TAX RATE	BONDS OUTSTANDING
MERCED COUNTY	1,221,000 Ac.	180,590	52,799,500.	1.35 1.15	861,000

ROAD DISTRICTS	Nº 1	104,960.	45,080.	3,161,480.	.90	165,752.
	Nº 2	24,960.	22,240.	895,315.	1.00	48,431.
	Nº 5	10,880.	5,600.	213,425.	2.00	5,565.
	Nº 10	52,500.	800.	2,382,015.	1.00	134,713.
	Nº 14	44.	44.	29,825.	55.00	89,847.

HIGH SCHOOLS	HILMAR	66,360.	4,480.	3,351,105.	.60	3,750.
	LE GRAND	113,000.	19,400.	4,522,760.	.30	17,500.
	MERCED UNION	469,120.	157,170.	27,884,665.	30	87,500.

GRAMMAR SCHOOLS	APPLEGATE	8,640.	6,500.	316,770.	2.70	800.
	ARENA	4,540.	4,540.	493,660.	2.47	
	ARUNDEL	11,280.	4,820.	599,635.	1.85	
	BARFIELD	17,540.	520.	505,200.	1.60	
	BUHACH	2,240.	2,240.	265,750.	2.60	
	CRESSEY	6,460.	4,380.	485,765.	1.82	2,000.
	EL CAPITAN	10,880.	8,160.	251,640.	2.60	
	ESCHSCHOLTZIA	8,960.	3,360.	871,335.	1.75	
	FARMDALE	5,920.	4,780.	357,975.	2.00	400.
	FRANKLIN	7,080.	5,960.	719,175.	2.80	
	FRUITLAND	3,280.	3,280.	401,785.	1.80	
	HOPETON	13,040.	4,000.	692,605.	1.55	
	JORDAN	9,920.	8,000.	506,010.	1.60	
	LE GRAND	15,920.	3,800.	1,362,830.	1.95	
	LONE TREE	61,760.	5,840.	830,425.	2.75	
	LIVINGSTON (IN)	624.	624.	468,775.	2.85	12,000.
	LIVINGSTON (OUT)	18,406.	14,846.	1,490,125.	2.95	
	MERQUIN	24,480.	4,480.	1,328,360.	4.30	
	MERCED COLONY	4,130.	4,130.	930,850.	1.65	
	MERCED UNION (IN)	1,775.	1,775.	5,730,440.	2.10	42,000
	MERCED UNION (OUT)	27,745.	10,865.	1,458,880.	2.20	
	MRS SWAIN	15,520.	8,870.	667,275.	2.17	2,500.
	MITCHELL (IN)	852.	852.	521,910.	1.95	5,000.
	MITCHELL (OUT)	5,868.	5,708.	579,540.	2.05	
	PLAINSBURG	5,680.	2,120.	524,790.	1.60	
	PLANADA	29,820.	8,900.	1,172,475.	1.75	
	PIONEER	18,470.	7,730.	804,385.	1.75	2,000.
	ROTTERDAM	14,000.	3,450.	228,820.	1.60	
	RUSSELL	18,960.	1,200.	397,575.	1.75	
	SAVANA	6,400.	4,120.	476,330.	2.15	2,000
	SNELLING	54,480.	4,640.	1,193,040.	1.55	
	TUTTLE	16,120.	9,910.	993,220.	1.60	
	WASHINGTON	24,000.	6,510.	700,090.	1.57	
	WINTON	4,160.	4,080.	500,200.	2.35	3,500.
	WHITMER	5,760.	5,600.	401,585.	2.55	400.

LIGHTING DISTRICTS	LE GRAND		360.	172,775.	.20
	PLANADA		800.	168,960.	.25
	SNELLING		160.	165,125.	.15
	WINTON		1,120.	189,555.	.02

CEMETERY DISTRICTS	MERCED	213,120.	86,160.	15,724,840.	.05
	MERQUIN	39,680.	4,480.	1,328,375.	.05
	PLAINSBURG	88,320.	14,800.	3,607,855.	.05
	WINTON	71,680.	62,200.	6,738,990.	.02

MERCED MOSQUITO DIST.		10,880.	7,198,020.	.05	
FRUITLAND DRAIN DIST.					3,100.
DRAINAGE DIST. Nº 1	2,850.	2,850.	BOND OBLIGATION ASSUMED BY M. I. D.		4,500.
DRAINAGE DIST. Nº 2	5,880.	5,880.			21,450.

CITIES	ATWATER	852.	852.	1.25	53,200.
	LIVINGSTON	624.	624.	1.00	88,195.
	MERCED	1,775.	1,775.	1.05	101,260.

3947 Ac.
General Long Road
EXHIBIT
No K
Filed 2/3 1936
H S ZIMMERMAN, Clerk
n. cross

RESPONDENTS' EXHIBIT "KK"

was a statement prepared by the Merced Irrigation District as to bond issues of various improvement districts, and which is set out in Respondents' Exhibit "OO" at page 109.

RESPONDENTS' EXHIBIT "LL"

EXTRACTS FROM BOARD OF
EQUALIZATION REPORT.

This exhibit consisted of extracts from the report of the California State Board of Equalization for the year 1929-30. This report recited that property taxed on an ad valorem basis in California is not assessed ordinarily at its full market value; that the assessments average 39.93 per cent of the appraised or market value of the property, however, that there are wide variations in the average in the several counties of the state; that to determine the percentage of actual value the board ascertained the actual value of selected properties in each county for comparison with the values as fixed by the county assessor on the same properties. Separate calculations were made as to property inside and outside of the cities. As a result of the calculation made the board finds the average local tax levied in 1930, represented 1.757 per cent of the market or actual value of the property taxed.

About 5000 parcels of property were selected for appraisal in forty-one counties. These forty-one

counties contained 98.02% of the non-operative property in California, excluding intangibles.

From this study it appears that the property within the cities in Merced County was assessed at \$6,053,205.00 and that this is but 28.23% of the actual value of such property. The actual value of such property was \$21,442,455.00.

It also appears that property outside the cities, located within the Merced County was assessed for \$29,707,160.00 and this [778] was but 25.96% of the actual value of such property. The actual value of such property was \$114,434,361.00. This did not include solvent credits or intangible property or operative property of public utilities.

Extracts from the report of the same board for 1931-1932 were in like form and found as to Merced County that the property within the cities was assessed at \$5,976,506, which was 29.57% of the actual value. The actual value was \$20,211,384.00. The property outside of cities in Merced County was assessed at \$27,972,857.00 which was but 29.95% of the actual value. The actual value was \$93,398,521.00.

For the year 1933-1934 the findings of the board were that as to Merced County the total assessment for taxation of all property for county, city, and school district purposes was \$32,815,885.00. The actual value of the property being \$94,242,242.00. The property being assessed at 34.82% of its actual value.

For the year 1935-1936 the findings are that the operative property of the public utilities in Merced County were assessed at \$7,900,355.00 for the year 1935 and that the assessed value on all property, real and personal, within the county of Merced is the sum of \$44,978,050.00 for the same year; that real estate without improvements was assessed at \$29,725,280.00. The improvements were assessed at \$9,325,700.00. [779]

RESPONDENTS' EXHIBIT "MM"

PETITION FOR DEBT READJUSTMENT

This is the same as Respondents' Exhibit "P", the exhibit having been offered twice, and which is set out in Respondents' Exhibit "OO" at page 10.

RESPONDENTS' EXHIBIT "NN"

SUMMARY OF PLEADINGS

This exhibit consisted of the summary of the pleadings and proceedings upon those pleadings appearing on pages 41 to 54 of Respondents' Exhibit "OO" offered in lieu of the original pleadings. This offer of evidence which was admitted also was so much of the record in the former case as purports to show the giving of notice to creditors of Merced Irrigation District, the order of the court fixing the hearing, the affidavit of publication of

the notice that was given and of the service and mailing notice to the dissenting bondholders. Also see Respondents' Exhibit "OO" pages 41 to 54.

RESPONDENTS' EXHIBIT "OO"

CERTIORARI RECORD

This is the Transcript of Record of the Supreme Court of the United States in the case of Merced Irrigation District, et al., vs. Reed J. Bekins, et al., of which the original exhibit is attached. [780]

RESPONDENTS EXHIBIT "PP"

was the Writ of Mandate by the Circuit Court of Appeals, dated April 12, 1937, reading as follows:
[781]

United States of America—ss.

The President of the United States of America
To the Honorable the Judges of the District Court
of the United States for the Southern District
of California, Central Division, Greeting.

Whereas, lately in the District Court of the United States for the Southern District of California, Central Division before you or some of you in the Matter of the Merced Irrigation District, debtor, Number 2907 in Bankruptcy, the Final Decree was

duly filed and entered on the 4th day of March, 1936, which said Decree is of record and fully set out in said matter in the office of the Clerk of the said District Court, to which record reference is hereby made, and the same is hereby expressly made a part hereof, and as by the inspection of the transcript of the record of the said District Court which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by Reed J. Bekins and Milo W. Bekins, as executors of the estate of Martin Bekins, deceased, et al., as appellants against Merced Irrigation District, the Reconstruction Finance Corporation, a corporation, et al., as appellees, agreeably to the act of Congress in such cases made and provided fully and at large appears:

And whereas, on the 12th day of April in the Year of Our Lord One Thousand Nine Hundred Thirty-Seven, the said cause came on to be heard before the Circuit Court of Appeals on the said transcript of the record and on motion of appellants for reversal of the decree of the District Court herein, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the motion be and hereby is granted and that the decree of the said District Court in [782] this cause be and hereby is reversed with costs in favor of the appellants and against the appellees, and that this cause be

and hereby is remanded to the said District Court with directions to dismiss the cause.

It is further ordered, adjudged and decreed by this Court that the appellants recover against the appellees for their costs herein expended and for execution therefor.

(April 12, 1937)

You, therefore, are hereby commanded, that such execution and further proceedings be had in the said cause in accordance with the decree of this Court and as according to right and justice and the laws of the United States ought to be had the said decree of the said District Court notwithstanding.

Witness the Honorable Charles E. Hughes, Chief Justice of the United States, the 24th day of May, in the year of Our Lord, One Thousand Nine Hundred Thirty-Seven.

Signed by O'Brien.

Costs taxes—\$90.50. [783]

RESPONDENTS' EXHIBIT "QQ"

JUDGMENT PURSUANT TO MANDATE

This exhibit was the judgment of the District Court in the former Merced case entered pursuant to the mandate of the Circuit Court of Appeals shown by the preceding Exhibit "PP," as follows:

In the United States District Court in and for the
Southern District of California, Northern Di-
vision.

No. 3907 in Bankruptcy

In the Matter of the

MERCED IRRIGATION DISTRICT,

an Irrigation District,

Debtor.

DECREE OF DISMISSAL

In this cause a Final Decree having been rendered and entered by this court March 4, 1936, and an appeal having thereafter been regularly taken by Florence Moore, American Trust Company, as trustee, Crocker First National Bank, as trustee, Mary E. Morris, West Coast Life Insurance Company, Pacific National Bank of San Francisco, Rose Pauson, Gertrude Pauson, Jeanette P. Haber, Frank Pauson & Son, Dr. Conrad Weil, Peter tum Suden and Richard tum Suden, as trustees for William A. Lieber, Peter tum Suden and the Bank of America National Trust and Savings Association as Trustees for William A. Lieber, Reed J. Bekins and Milo W. Bekins as Executors of the Estate of Martin Bekins, deceased, Reed J. Bekins, Chas. D. Bates and Lucretia B. Bates, James Irvine, E. D. Woodward, W. S. Jewell, George H. Evans, J. R. Dempster, Roy R. Dempster, D. R. Dempster and M. C. Dempster as trustees, M. R. Dempster, Theo. F.

Thieme, Miriam H. Parker, D. Lyle Chirardelli, R. J. McMullen, J. Rupert Mason, F. F. G. Harper, Fletcher G. Flaherty, Sherman Stevens, Cogswell Polytechnical College, Avery-Fuller Children's Center, N. O. Bowman, Cooley Butler, Stephen H. Chapman, Grayson Dutton, H. S. Dutton, Carl Feldman, Tabitha F. Griffin, Emogene Cowles Griffin, J. N. Gillett, Claire S. Heller, Flora Hatton, Geo. Habenicht, Otis M. Judson, A. M. Kidd, Mrs. Amelia Kingsbaker, James H. Jordan, Dante Muscio, Sophia Mackenzie, Nettie Mackenzie, Gilbert H. Pearsall, Joseph S. Ray, Mrs. Florence S. Ray, Wm. F. Shanahan, Julia Sunderland, Seth R. Talcott, S. [785] Joseph Theisen, Alma H. Woore, A. A. Watson, Frances V. Wheeler, Henry Freiberg, Mr. and Mrs. J. H. Fine, Hazel J. Hackenbach, Tulokay Cemetery Association, Edna Bicknell Bagg, John Bicknell Bagg, Mary B. Cates, Barker T. Cates, Horace B. Cates, Nancy Bagg Eastman, Charles C. Bagg, Mildred Nancy Cates Stephens, Mary Edna Cates, John D. Bicknell Bagg, J. C. Titus, Mrs. Fanny M. Dole, George F. Covell, Grace Covell, A. E. Julien, Edward J. Greenhood and W. H. Heller, to and prosecuted in the United States Circuit Court of Appeals for the Ninth Circuit, and the said cause, on the hearing thereof, having been reversed, with costs, in favor of the appellants and against the appellees, by the United States Circuit Court of Appeals for the Ninth Circuit, on the transcript of the record and on motion

of appellants therefor, and a mandate of the said United States Circuit Court of Appeals for the Ninth Circuit, having come down to this court reversing the decree entered herein and directing that the cause be dismissed;

It is ordered, adjudged and decreed that the Final Decree entered herein on the 4th day of March, 1936, be and the same hereby is vacated, annulled, set aside and declared void and ineffective for any purpose, and the petition of Merced Irrigation District herein for debt readjustment and this cause is hereby dismissed and all orders restraining the creditors of said district from asserting or prosecuting their, or any of their, claims against said Merced Irrigation District are vacated, and judgment is entered herein in favor of said appellants and respondents, for their costs in accordance with said mandate of the United States Circuit Court of Appeals for the Ninth Circuit in the amount of \$90.50 and for their costs incurred in this court in the amount of \$421.34 against the petitioner and appellee, Merced Irrigation District, for which execution shall issue.

Dated: July 6, 1937.

GEO. COSGRAVE

United States District

Judge. [786]

Approved as to form as provided for by Rule 44:

C. RAY ROBINSON

H. K. LANDRAM

STEPHEN W. DOWNEY

Attorneys for Petitioner.

ORRICK, PALMER &

DAHLQUIST

Attorneys for Interveners,

Bondholders Protective

Committee and

Reconstruction Finance

Corporation.

[Endorsed]: Respondents Exhibit QQ. Filed Nov.
25, 1938. [787]

RESPONDENTS' EXHIBIT "RR"

History of Merced District as contained in Respondents' Exhibit "OO" at page 118. [788]

RESPONDENTS EXHIBIT "SS"

was a copy of Minute Order of the Superior Court, Merced County, in case of R. F. C. vs. M. I. D., No. 11604, as follows:

I hold the California Irrigation District Refinancing Act of 1937 to be constitutional, and therefore

all actions which might interfere with the settlement proposed in case no. 11675 of this court are stayed until final determination of said case. However, in spite of such stay, the court has power to rule on the matters submitted to it, subject to said stay.

In this action if the minority bondholders are right in some, if not all, of their contentions they have a sufficient interest to warrant intervention.

It is hereby ordered that further proceedings in this suit be stayed until final determination of Matter of Petition of Merced Irrigation District No. 11675, and defendant is given until 10 days after said determination to answer the complaint and either or any party is given until such time to answer any other pleading to which an answer is proper.

Subject to said stay of proceedings the following rulings are hereby made:

The various motions of R. F. C. and M. I. D. to dismiss complaints or cross-complaints in intervention and to set aside interventions already permitted by ex parte orders are denied and the demurrers to said complaints and to the cross-complaint of Claire Strauss are over-ruled, and the motions to strike said pleadings are denied. The motions of Sherman Stevens, et al., of Cogswell Trustees, etc. of West Coast Life Insurance Company, of Mary E. Morris, of Pacific National Bank, and of tun Suden, et al., respectively to intervene, are granted, with the proviso above set forth that no answer to

any pleading is required until 10 days after final determination of said proceedings No. 11675.

October 25th, 1937.

ALBERT F. ROSS,

Judge of the Superior Court,
presiding. [789]

RESPONDENTS' EXHIBIT "TT"

COMPLAINT IN INTERVENTION

This exhibit was a copy of a petition and complaint in intervention filed by the trustees of Cogswell Polytechnical College in the case of Reconstruction Finance Corporation vs. Merced Irrigation District, described in petitioner's Exhibit No. 17.

By this complaint the Cogswell Polytechnical College alleged that it is the owner of \$50,0000 of the original bonds of the Merced Irrigation District of which one bond had matured, and as to which there are unpaid coupons for interest detached from all the bonds from July 1, 1933 and subsequently, representing interest at 6% per annum, and that the bond and these coupons were wholly unpaid, and further alleged on information and belief, that the defendant Merced Irrigation did not intend to make any defense to the action brought by the Reconstruction Finance Corporation, but intends to default; deny that the plaintiff is the owner or holder of any of the bonds described in its complaint or any of the coupons referred to therein; deny that there is a controversy between

the parties as to the rights and obligations of the plaintiff and defendant and allege that the bonds and coupons were fully discharged and paid; the College further claimed an interest in the matter of the litigation and asked that the plaintiff take nothing by its complaint and that it be declared that the bonds and coupons of the district claimed by the plaintiff be null, void, and no longer outstanding, and that it is adjudged that the Reconstruction Finance Corporation is not the owner or holder thereof, but that they are wholly invalid and void and that there is no indebtedness existing, arising out of said bonds, coupons, or interest from the defendant Merced Irrigation District to the plaintiff Reconstruction Finance Corporation. [790]

RESPONDENTS' EXHIBIT "UU"

Portions of Bulletin 21-H of Division of Water Resources of the Department of Public Works of the State of California, being a report on irrigation districts in California for the year 1936, portions of which were read in evidence as follows:

Page 16, under Chapter III of Financial Review—

“Disbursal of loan funds were made by eighteen districts to take up portions of old issues that had been deposited in acceptance of compromises agreed upon. Refunding bonds were in most cases not issued. The R.F.C. accepted

and held old bonds as security for the loans advanced until practically one hundred per cent of the outstanding issues of the districts had been turned in."

In table 1, table 2 and table 3, referring to statistical data relating to the Merced Irrigation District, and comparing that with statistical data relating to the Turlock Irrigation District, we find, in Table 1 under "Capacity, acre feet," for Merced, 289,000, and total acre feet, distribution of water, 498,000. Under Turlock, for the same year, we find reservoir capacity of 226,000 and distribution 440,000. In table No. 2 we find, under gross area, Merced, 189,000 odd and irrigable area 165,000 odd. Under Turlock we find 181,000 gross odd, that is, I am not giving the exact number, and irrigable area 162,000 odd. In table 3, under the summary of assessments levied, tax certificates sold and so forth, under Merced, we find total assessed valuation \$12,078,000. Under Turlock we find \$13,373,000. We find the rate per \$100 for Merced, \$3, and for Turlock, \$2.76. We find the total assessment levied for Merced as \$342,000. I am just giving the round numbers. And for Turlock we find \$353,000. We find revenues collected in 1936 for water tolls and water and power sales, Merced \$601,000, and Turlock, \$663,000. [791]

RESPONDENTS' EXHIBIT "VV"

This exhibit was excerpts from report of the Merced District made to the Reconstruction Finance Corporation in connection with obtaining this loan, and which is set out in Respondents' Exhibit "OO" at page 103. [792]

RESPONDENTS' EXHIBIT No. WW

CHART

This exhibit was a chart showing graphically the facts testified to by the witness Swenson, the chart comparing the landowners' operating cost with the landowners' gain on the one hand and the bondholders' investment with the bondholders' loss, illustrating the landowners' gain by the refinancing at 7.4% of the total operating cost and the bondholders' loss at 55.3% of the total bondholders' investment. [793]

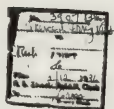
A

B

Land Owner's
GAIN

7.4%

Bond
Holder's
LOSS 55.3%



LANDOWNER'S OPERATING COSTS.

BONDHOLDER'S INVESTMENT

RESPONDENTS' EXHIBIT "XX"

was a report of Irrigation Districts in California from Bulletin 21-a, Division of Water Resources, as follows: [797]

REPORT ON IRRIGATION DISTRICTS

27

TABLE II. DATA RELATING TO ASSESSED VALUATION AND ASSESSMENT RATE PER ACRE, WATER DIVERTED AND AVERAGE TOLLS PER ACRE-FOOT DIVERTED, AND ESTIMATED AVERAGE COST PER ACRE AND PER ACRE-FOOT DIVERTED FOR LAND IRRIGATED IN 1929

District	Assessed valuation per acre, 1930			Annual assessment per acre land of usual valuation		Diverted, 1929		Water		
								Average toll per acre-foot, diverted	Estimated cost to land irrigated, 1929	
	High	Low	Usual	1929	1930	Acre-feet	Acre-feet per acre	Per acre	Per acre-foot, diverted	
Albaugh.....	\$60 00	\$40 00	\$50 00	\$6 00	\$5 00	7,600	1.35	\$2 94	\$9 97	\$7 38
	60 00	3 00	60 00	1 58	1 43	85,700	.86	-----	1 58	1 84
	75 00	20 00	50 00	4 25	4 25	117,313	7.20	-----	4 25	5 39
	150 00	40 00	150 00	7 50	9 00	37,869	2.69	2 09	13 14	4 88
	100 00	100 00	100 00	-----	25	38,375	7.73	59	4 53	5 59
Beaumont.....	100 00	-----	100 00	11 00	9 50	1,591	.83	8 67	17 90	21 57
	200 00	1 00	200 00	1 40	5 00	9,540	4.11	89	5 08	1 24
	15 00	2 00	10 00	-----	-----	15,775	2.26	37	8 83	3 77
	40 00	5 00	40 00	5 33	2 60	1,500	.27	-----	2 60	9 63
	200 00	20 00	130 00	5 60	5 53	15,970	1.60	2 17	8 80	5 50
Camp Far West.....	150 00	5 00	150 00	4 50	4 73	5,000	2.04	-----	4 50	2 21
	80 00	80 00	80 00	6 40	7 00	4,175	2.14	1 89	10 44	4 88
	100 00	100 00	100 00	10 00	10 50	3,564	1.25	-----	10 00	8 00
	75 00	10 00	75 00	3 26	3 08	7,395	6.77	1 03	10 26	1 52
	100 00	15 00	100 00	2 20	2 20	105,400	.82	-----	2 20	2 68
Corcoran.....	100 00	80 00	100 00	2 08	2 08	11,955	.66	1 23	2 90	4 39
	70 00	30 00	75 00	3 94	3 81	21,840	14.56	27	7 87	5 54
	190 00	125 00	175 00	6 53	6 53	29,539	1.98	3 20	12 86	6 49
	-----	-----	125 00	6 00	6 00	8,600	1.66	-----	6 00	3 61
	155 00	10 00	75 00	60	49	8,100	1.35	6 54	9 43	6 99
Fair Oaks.....	96 00	25 00	90 00	4 27	4 27	4,620	1.81	2 73	9 10	5 03
	100 00	50 00	100 00	2 50	2 50	323,633	1.79	-----	2 50	1 40
	44 00	30 00	40 00	2 60	2 60	339,325	8.36	31	5 16	6 62
	200 00	5 00	200 00	13 44	13 44	4,436	2.70	3 54	23 00	8 52
	150 00	5 00	100 00	5 00	5 00	2,807,577	6.62	03	5 20	7 79
Jacinto.....	-----	-----	60 00	2 85	2 85	14,409	3.47	22	3 62	1 04
	150 00	25 00	150 00	7 05	5 60	36,000	3.09	1 86	12 81	4 15
	1,500 00	1,000 00	1,000 00	17 50	17 50	319	40	73 52	46 82	117 05
	100 00	-----	100 00	1 85	1 75	26,566	1.18	-----	1 85	1 57
	-----	-----	100 00	4 25	4 25	25	.50	70 52	39 51	79 02

TABLE II. DATA RELATING TO ASSESSED VALUATION AND ASSESSMENT RATE PER ACRE, WATER DIVERTED AND AVERAGE TOLLS PER ACRE-FOOT DIVERTED, AND ESTIMATED AVERAGE COST PER ACRE AND PER ACRE-FOOT DIVERTED FOR LAND IRRIGATED IN 1929—Continued

District	Assessed valuation per acre, 1930			Annual assessment per acre land of usual valuation		Diverted, 1929		Water		
								Average toll per acre-foot, diverted	Estimated cost to land irrigated, 1929	
	High	Low	Usual	1929	1930	Acre-feet	Acre-feet per acre		Per acre-foot, diverted	Per acre
La Mesa, Lemon Grove and Spring Valley.....	\$500 00	\$75 00	\$350 00	\$9 10	\$9 10	3,410	.87	\$38 44	\$42 45	\$48 79
Lindsay-Strathmore.....	175 00	1 00	140 00	19 22	19 99	15,340	1.61	10 00	35 37	21 97
Little Rock Creek.....	100 00	100 00	100 00	9 50		1,900	.95		9 50	10 00
Maxwell.....	200 00	5 00	125 00	7 50	7 50	12,799				
Merced.....						536,000	4.25		7 50	1 76
Modesto.....	150 00	40 00	80 00	4 48	4 24	329,242	4 96		4 48	90
Naglee-Burke.....	100 00	60 00	100 00	9 00	10 00	6,183	3.36			2 68
Nevada.....			45 00		11 27	13,053	3.11	2 38	7 40	2 38
Newport Heights.....	1,100 00	700 00	800 00	10 00	11 60	603	1.95	11 32	32 03	16 43
Newport Mesa.....	600 00	600 00	600 00	12 00	12 00	476	1.19	6 45	19 68	16 54
Oakdale.....	145 00	10 00	55 00	3 58	3 52	147,846	6 34		3 58	56
Oroville-Wyandotte.....	100 00	50 00	100 00	2 00	2 00	3,425	1.66	5 02	10 31	6 21
Palmdale.....			100 00	7 62	9 64	1,250	1.24		7 62	6 15
Palo Verde.....	100 00	40 00	90 00	15 69	15 25	205,000	6 34		15 69	2 47
Paradise.....	90 00	2 00	67 50	5 06	5 06	3,924	1.19		5 06	4 25
Potter Valley.....	60 00	3 00	60 00	1 50	2 67	2,700	1.75	1 45	4 04	2 31
Princeton-Codora-Glenn.....	70 00	65 00	67 50	3 04	3 04	53,078	12.72	34	7 32	58
Provident.....	80 00	60 00	75 00	6 38	6 38	90,977		5 26		
Ramona.....	50 00	40 00	50 00	3 50	4 00	138	2.30	36 08	89 48	37 60
San Diego.....	1,200 00	100 00	400 00	14 00	12 00	1,721	.91	12 68	25 59	28 12
Santa Fe.....	450 00	60 00	200 00	12 54	13 18	2,356	.98	14 81	27 08	27 63
San Ysidro.....	300 00	20 00	250 00	12 50	12 50	460	3.54	23 09	94 21	26 61
South Montebello.....	850 00	850 00	850 00	17 00	17 00	1,085	1.31	10 08	30 23	23 08
South San Joaquin.....	135 00	20 00	100 00	6 45	7 10	224,747	4.14		6 45	1 56
Stinson.....	50 00	50 00	50 00	4 25	4 25	16,176	2.70	1 80	9 13	3 38
Table Mountain.....	150 00	100 00	125 00	6 00	6 25	3,815	14 62	31	10 55	72
Terra Bella.....	130 00	50 00	100 00	9 50	10 00	5,919	1.50	12 00	27 56	18 37
Thermalito.....	150 00	120 00	150 00	10 80	11 18	3,875	1.97		10 80	5 48
Tracy-Clover.....	100 00	100 00	100 00	8 50	9 00	1,498	1.56		8 50	5 12
Traquility.....	150 00	150 00	150 00	3 00	4 50	11,400	1.70		3 00	1 76

REPORT ON IRRIGATION DISTRICTS

Tulare.....	200 00	50 00	100 00	4 50	50	1,000	3 54	8 78	4 50	1 27
Turlock.....	150 00	40 00	100 00	18 00	4 28	473,944	1 08	16 31	32 79	19 52
Vandalia.....	200 00	200 00	200 00	11 70	18 98	1,852	1 57	2 76	37 24	23 72
Vista.....	175 00	135 00	150 00	10 00	11 70	6,450	1 78		14 93	8 39
Walnut.....	1,000 00	1,000 00	1,000 00			1,626				
Waterford.....	200 00	5 00	120 00	6 55	7 08	23,645	4 48		6 55	1 46
Westside.....	100 00	100 00	100 00	4 50	5 75	20,800	1 84	2 35	8 82	4 79
West Stanislaus.....	55 00	45 00	50 00	1 17	2 00	8,168	2 18	2 09	5 72	2 02
Woodbridge.....	150 00	25 00	100 00	2 00	2 00	34,030	5 50	36	4 00	7 72
Total diverted.....						6,366,642				

RESPONDENTS' EXHIBIT "YY"

This exhibit consisted of excerpts from Bulletin No. 34 of Division of Water Resources of the State of California, and which is set out in Respondents' Exhibit "OO" at page 145. [797-A]

RESPONDENTS' EXHIBIT "ZZ"

This exhibit was excerpts from Bulletin 21-F of Division of Water Resources of the State of California, as follows: [804]

TABLE I

DATA RELATING TO SOURCE OF SUPPLY, STORAGE AND DISTRIBUTION OF WATER FOR CALIFORNIA IRRIGATION DISTRICTS

Name of District	Source of Water Supply	Wells			District In- stalled Horse Power	Reservoirs		Acres-feet reported Diverted by Districts, 1934			Distribution of Water Diverted by Districts		
		District		Pri- vate Total		Capacity Acres-feet	Storage Available Season Acres-feet	By Pump	By Gravity	Total	Inside District		Outside District Acres-feet
		Irriga- tion age	Drain- age								Irriga- tion Acres-feet	Domestic Acres-feet	
Alameda	Wells	26		26	595	75		22,308		22,308	4,616		17,492
Alta	Kings River			2,094		12		34,866		34,866	34,866		
Anderson-Cottonwood	Sacramento River				5	115		131,800		131,800	131,800		
Arroyo	San Joaquin River				4,350	115		12,806		12,806	12,806		5,119
Bakers-Carlotta	Colorado River (part of Tuma project)							45,493		20,140	15,343		
Baker Creek	Eagle Lake												
Beaumont	Crests and Wells	10	1	11	420	184	4	2,285	110	2,395	2,174	221	
Big Springs	Big Springs				345	72		6,352	17,115	23,467	17,115		
Browns Valley	North Fork Tuma River												
Bute Valley	Bute and Lardner Creeks and Wells	5		5	125	40		1,750	150	1,900	1,900		
Byron-Etham	Old River (San Joaquin River)				1,105	70		7,288		7,288	7,288		
Camp Far West	Beas River				70		5,000	5,000		5,000	5,000		
Carmichael	American River and Wells			2	440	350	2,500	5,600	750	6,350	1,708		
Carpenter	American River, North Fork Ditch Company							948	4,000	4,948	4,000		
Citrus Heights	American River, North Fork Ditch Company												
Compton-Delavan	Sacramento River (from Glenn-Colusa I.D.)												
Consolidated	Kings River	26		26	3,500	77		17,479	5,716	23,195	12,573		
Corcoran	Kings River, Peoples Ditch and Wells				235			8,716	23,235	31,951	23,235		1,705
Cottonwood	Tuma River							10,000	10,000	20,000	5,919		
Deer Creek	Deer Creek							3,500	3,500	7,000	3,500		
East Contra Costa	Old River (San Joaquin River)	3	3	6	2,800	67		29,441		29,441	28,708		19
El Cambo	Wells	30	30		860	65		3,911	13,256	17,167	3,911		98
El Cerrito	El Cerrito River and Weber Creek												
El Estero	Wells (and purchased)	3	70	73	14	49		4,696	4,696	9,392	4,696		
Empire West Side	Kings River and Wells												
Falrocks	North Fork Ditch Company												
Frano	Kings River and Wells	7	2,400		210	40		5,000	335,904	340,904	335,904		
Glenn-Colusa	Sacramento River				3,200	63		4,711		4,711	4,711		
Grass Valley	Grass Valley												
Hot Spring Valley	Pit River and Big Sage Reservoir						75,000	5,300	5,300	5,300	5,300		
Imperial	Colorado River							2,049,954		2,049,954	1,623,801		426,153
Island No. 3	Kings River (and purchased)				175			13,140		13,140	13,028		112
Jalisco	Kings River				300	7		32,513		32,513	24,147		705
La Canada	Sacramento River and Wells	56	2	58	1,000	44		400		400	400		
La Grana	Canyons and Wells				1,390	800							
Laguna	Kings River				300			10,687		10,687	10,687		
Lassen	Kings and Tuma Rivers (and purchased)												
La Mesa, I.C. & S.V.	San Joaquin River, Boulder Cr. and Wells	11		11	750	350	2,335	70	1,349	5,399	47	23	70
Linden	Wells				120								
Lindsay-Strathmore	Yachuma River and Wells	39	39	78	1,145	285		12,498		12,498	14,938	195	15,130
Little Rock Creek	Little Rock Creek										1,800		1,800
Marion	Sacramento River (from Glenn-Colusa I.D.)												
Marshall	Merced River and Wells												
Merced	Merced River and Wells	80	80	160	2,000	35	289,000	63,000	276,200	339,200	339,200		2,612

TABLE 11

CALIFORNIA IRRIGATION DISTRICT CROP REPORT FOR 1934

Name of District	Irrigated Area, Acres	Area Held by Date under Irrigation, Acres	Estimated Number of Bales			Kind and Acreage of Crops Reported										Area Cropped		
			Farm Land	Open Lots	Total	Alfalfa	Cotton	Rice	Wheat and Grain Hay	Other Field Crops and Truck	Vines	Decid-uous Fruits and Nuts	Citrus	Avocados	Not Sepa-rated	Dry Farmed Acres	Irrigated Acres	Total Reported Acres
Alameda	8,133	8,112	281	2,900	6,300	650	900		595	210	4,550	6,800	930		875		3,230	3,230
Alameda-Cottonwood	129,300	110,000	3,400	2,900	6,300	650	900		595	210	4,550	6,800	930		11,720		70,000	70,000
Alameda-Cottonwood	32,000	28,084	350	350	750	1,653			3,061	7,796	69	305			69		12,993	12,993
Alameda-Cottonwood	15,599	15,134	185		185	2,141	1,044		8			94	71		941		4,022	4,598
Alameda-Cottonwood	6,004	6,000	150		150												2,011	2,011
Alameda-Cottonwood	4,134	3,351	350	1,260	1,620	1,111											2,133	2,133
Alameda-Cottonwood	3,567	2,500	150	35	35	200			165		90	403			822		6,990	6,750
Alameda-Cottonwood	40,000	11,740	151	18	169	200									5,862		1,000	1,000
Alameda-Cottonwood	30,400	17,500	75	45	120												2,100	2,100
Alameda-Cottonwood	17,600	12,504	180	30	210	6,800			500	400	200	1,200					7,000	9,100
Alameda-Cottonwood	4,095	2,658	8		8	105			182	477		500			2,860		2,384	4,184
Alameda-Cottonwood	3,138	2,016	324		324						300	1,250	150		300		1,000	2,000
Alameda-Cottonwood	1,328	1,330	119	155	274												1,102	1,102
Alameda-Cottonwood	3,167	3,079	330		330	25			128		624	1,062	131		306		1,674	2,276
Alameda-Cottonwood	12,652	11,400	6		6	60			2,000						5,000		1,412	9,012
Alameda-Cottonwood	109,027	105,757	4,600	216	4,816												85,350	85,350
Alameda-Cottonwood	51,656	51,000	280	7	287	3,044			8,113	493					11,172		11,508	11,508
Alameda-Cottonwood	5,932	5,300	49		49										460		1,682	1,682
Alameda-Cottonwood	2,186	2,000	85	17	102	150			950	180	5	470			300		1,735	1,965
Alameda-Cottonwood	20,200	19,760	360	120	480	1,126			769	3,081	1,006	7,778					13,760	13,760
Alameda-Cottonwood	7,546	7,546	250		250	900			1,450	600	140	865			691		2,774	4,646
Alameda-Cottonwood	3,730	7,405	518	546	1,064				2,800	100	51	32			357		3,900	3,900
Alameda-Cottonwood	6,460	6,400	51		51	1,310	750		700	500					2,800		2,530	2,530
Alameda-Cottonwood	3,800	3,400	286	167	453	89					195	1,206	491		1,921		1,921	1,921
Alameda-Cottonwood	9,935	9,900	321	45	366												1,482	1,482
Alameda-Cottonwood	281,300	239,000	9,255		9,255												163,000	163,000
Alameda-Cottonwood	122,423	110,111	26,779		26,779				19,999	1,867	340	1,145			1,404		33,241	34,124
Alameda-Cottonwood	2,163	1,800	45	20	65	1,000				20							1,020	1,020
Alameda-Cottonwood	9,533	9,000	37		37	170			1,220								1,390	1,390
Alameda-Cottonwood	612,200	521,600	15,000	6,286	21,286	1,973,334	4,536			134,758	1,403	1,166	10,219		46,719		396,535	396,535
Alameda-Cottonwood	4,620	4,120															3,000	3,000
Alameda-Cottonwood	11,732	11,496	1,120		1,120	1,230			2,666	1,035		890			1,189		4,000	6,990
Alameda-Cottonwood	26,642	18,266	26,506	7	26,513	2,666	2,100		6,106	538					82		11,492	11,492
Alameda-Cottonwood	1,322	1,259															245	245
Alameda-Cottonwood	34,658	30,000	800		800												9,400	9,400
Alameda-Cottonwood	23,283	23,000	24		24												20	
Alameda-Cottonwood	320	288																
Alameda-Cottonwood	19,092	13,000	411	5,700	6,800												4,000	4,000
Alameda-Cottonwood	13,700	13,000	310	36	346													
Alameda-Cottonwood	15,234	14,540	437		437												5,853	14,234
Alameda-Cottonwood	3,073	2,477	921	119	1,040												1,200	1,200
Alameda-Cottonwood	173,000	173,000	2,000	2,132	4,132												635	635
Alameda-Cottonwood	8,420	8,000															87,765	132,095
Alameda-Cottonwood	190,000	167,000	2,500	2,148	4,648	13,921	3,790		26,487	14,137	12,525	18,131			87,265			

Meadow Hay

TABLE II
CALIFORNIA IRRIGATION DISTRICT CROP REPORT FOR 1934 (Continued)

Name of District	Gross Area, Acres	Irrig-able Acres	Area Held by Dist-ricts under Tax Deed, Acres	Estimated Number of Holdings			Kind and Acreage of Crops Reported								Area Cropped			
				Farm Land	Town Lots	Total	Alfalfa	Cotton	Rice	Grain and/or Hay	Other Field and Truck	Vines	Decid-uous Fruits, Nuts and Olives	Citrus	Avocados	Not Re-ported	Dry Farmed Acres	Irrig-ated Acres	Total Acres Reported
Modesto	81,203	77,118	472	2,663	3,110	5,773	16,936		1,096	15,427	9,940	8,991	10,043	9,270	5,488	65,815	71,303	
Monterey	25,496	18,000	10,434	100	200	300	500			5,000				395	5,000	5,485	5,880	
Naglesburg	2,472	2,446	492	39		39	766			695	633	8	4	40		2,366	2,366	
Norwalk	206,231	194,000	9,348	1,865		1,865										9,000	9,000	
Report Heights	1,593			151	1,322	1,473	20			80	465	2	35	1	140	100	783	
Report West	694					216												
Cadillac	73,460	64,200	10,623	1,596	1,406	3,002	3,040	248	2,216	17,726	2,579	2,405	5,322	7,507	17,749	23,094	40,844	
Oroville-Wendotte	24,200	22,300	1,434	154	90	244						19	366			610	610	
Palmdale	4,746	4,698	3,149	46	138	234	217			1,389		8				21,495	21,495	
Palo Verde	88,693	70,000		465	135	600	7,950	10,779		1,389	1,495							
Paradise	11,260	9,436	3,469	600	100	700					105	80	995	270		1,810	1,810	
Peter Valley	5,042	4,195	None	105		105										2,500	2,500	
Princeton-Adams-Dean	13,523	12,200	424	179	778	1,179	778		1,618		460		1,280	695	3,000	4,771	7,771	
President	22,695	21,000	13,280	18		215			6,393						6,393	200	200	
Rancho	660	594			215													
Salvale	18,020	16,900	None	94	133	227										7,416	7,416	
Silverdale	15,430	14,600	504	168	672	1,668	500	500		1,000	1,000				3,000	3,000	3,000	
San Diego	4,000	3,000	None	606	894	1,500					365		30	5	1,088	1,696	1,706	
San Felipe	10,106	6,890	None	340	440	780					300		160	520	2,780	2,780	2,780	
San Felipe	532	490	21		361											500		
Scott Valley	5,131	4,600	None	26		26	1,500			1,000				2,100	600	4,000	4,600	
Serrano	1,498	1,319	None	140		140					2					1,302	1,302	
South San Joaquin	71,627	66,465	None	320	75	390	17,953	17	30	12,032	4,913	9,956	3,874	14,993	12,159	53,841	65,970	
Stinson	9,421	9,000	9,048	1	4	5	100	1,300		2,600	300					4,300	4,300	
Table Mountain	1,995	1,780		19		19	65		320							395	395	
Terra Bella	12,285	12,070		530	95	625			150		345		415	500	810	2,550	3,360	
Thermalito	3,110	2,940	155	295	450	960					54	92	364		791	1,000	1,000	
Tracy-Clover	1,476	1,400	194	178	372	780	249		145					666		1,000	1,000	
Tranquillity	10,750	10,190		115	85	200		1,250		3,100	200					5,000	5,000	
Tulare	34,000	30,600	None	945	413	588												
Verdala	181,556	179,271	5,000	2,500	7,500	39,965		567	40,138	28,366				7,590		135,993	135,993	
Verdala	1,275	1,253	67	42	109									19	1,096	1,096	1,096	
Verdala	18,330	14,654	881		1,559	25			40	956		39	127	567	500	7,302	7,802	
Walnut	311	311	None		70									6		906	906	
Waterford	14,110	11,424	1,465	76	318	1,229			3,130	696	321	1,559		1,357	3,200	5,322	6,622	
West Side	21,626	21,500	None	117	293	410			2,261	1,680	290	272		2,464	8,074	10,702	12,702	
West Stanislaus	14,250	14,000	None	110	110	124	2,925	640	5,435	7,748		240		2,990	2,710	12,068	12,068	
Woodbridge	14,290	14,000	None	159		159	1,156		351	1,073	2,400	2,400	1,668	4,955		12,237	12,237	
Totals	2,297,239	2,263,612	210,465	53,351	34,421	91,297	350,660	39,180	37,980	188,589	231,765	101,564	89,878	6,445	243,878	1,536,417	1,544,360	
Butte Vista Water S.D.	72,283	46,424	None	95	35	130		3,405		3,750	4,100			150	4,655	9,200	13,855	

TABLE V

YEAR FORMED, AREA, AND BONDS OUTSTANDING IN CALIFORNIA IRRIGATION DISTRICTS
January 1, 1935

Irrigation District	Year Formed	Estimated Area		Bonds Outstanding Total	Bonds Outstanding Per Acre	
		Gross Acres	Irrigable Acres		Gross Area	Irrigable Area
Alpaugh -----	1915	8,133	8,132	\$ 207,710	\$ 25.60	\$ 25.60
Alta -----	1888	129,300	110,000	132,500	1.02	1.20
Anderson-Cottonwood -----	1914	32,000	28,064	1,141,000	35.66	40.66
Banta-Carboma -----	1921	15,600	15,194	1,137,060	72.64	74.84
Bard -----	1927	6,004	6,004	None	None	None
Barter Creek -----	1917	9,336	8,636	511,000	54.53	59.17
Beaumont -----	1919	4,141	3,161	205,100	49.52	64.88
Big Springs -----	1927	3,567	2,500	59,000	16.54	23.60
Big Valley -----	1925	12,430	12,000	None	None	None
Browns Valley -----	1888	40,000	11,700	None	None	None
Butte Valley -----	1920	29,400	17,500	594,000	20.00	33.94
Byron-Bethany -----	1919	17,600	12,544	569,000	33.00	45.32
Camp Far West -----	1924	4,086	2,658	179,000	43.78	67.34
Carrichael -----	1916	3,138	3,038	84,100	26.46	27.35
Carpenter -----	1927	1,328	1,320	196,000	147.58	148.48
Citrus Heights -----	1920	3,167	3,079	152,010	48.00	50.00
Compton-Delevan -----	1920	12,652	11,500	384,000	30.35	33.39
Consolidated -----	1921	149,047	145,757	None	None	None
Corcoran -----	1919	51,606	51,000	733,000	14.19	14.40
Cordma -----	1919	5,992	5,300	106,725	17.81	20.13
Deer Creek -----	1926	2,186	2,000	10,000	4.57	5.00
East Contra Costa -----	1926	20,200	19,760	1,153,000	57.00	58.50
El Camino -----	1921	7,546	7,546	423,000	56.03	56.03
El Dorado -----	1925	30,702	19,905	688,000	22.40	34.56
El Nido -----	1929	9,330	7,405	120,000	12.86	16.10
Empire West Side -----	1931	6,460	6,400	None	None	None
Fair Oaks -----	1917	3,800	3,400	84,000	22.10	24.70
Fallbrook -----	1925	9,015	9,000	None	None	None
Fresno -----	1920	241,300	239,080	None	None	None
Glenn-Colusa -----	1920	122,423	110,111	1,391,150	11.37	12.63
Grenada -----	1921	2,163	1,800	136,000	63.30	68.00
Hollister -----	1923	25,000	24,500	None	None	None
Hot Spring Valley -----	1919	9,533	9,000	83,500	8.75	9.30
Imperial -----	1911	612,600	521,600	14,290,000	23.29	27.60
Island No. 3 -----	1921	4,620	4,120	None	None	None
Jacinto -----	1917	11,732	11,496	157,000	13.38	13.66
James -----	1920	26,642	18,266	999,000	37.35	54.47
La Canada -----	1924	1,296	1,239	328,000	253.48	264.73
Laguna -----	1920	34,858	30,000	None	None	None
Lakeside -----	1924	320	288	33,000	103.12	114.58
Lakeland -----	1923	23,283	23,000	None	None	None
La Mesa, L. G. and S. V. -----	1913	19,052	13,000	1,658,768	82.04	127.60
Linden -----	1929	13,700	13,500	None	None	None
Lindsay-Strathmore -----	1915	15,246	14,540	1,427,000	93.66	98.21
Little Rock Creek -----	1892	3,073	2,877	360,000	117.50	125.13
Lucerne -----	1925	33,407	33,000	None	None	None
Madera -----	1920	173,000	170,000	None	None	None

TABLE V

YEAR FORMED, AREA, AND BONDS OUTSTANDING IN CALIFORNIA IRRIGATION DISTRICTS (Continued)
January 1, 1935

Irrigation District	Year Formed	Estimated Area		Bonds Outstanding Total	Bonds Outstanding Per Acre	
		Gross Acres	Irrigable Acres		Gross Area	Irrigable Area
Merced -----	1919	190,000	170,000	\$16,191,000	\$ 85.21	\$ 95.24
Modesto -----	1887	81,203	77,118	3,715,104	45.75	48.17
Mojave River -----	1917	27,665	27,000	None	None	None
Montague -----	1925	25,495	18,000	1,395,000	54.70	77.50
Maglee-Burk -----	1920	2,871	2,846	186,000	64.79	65.35
Nevada -----	1921	266,000	164,000	8,087,000	30.36	49.25
Newport Heights -----	1918	1,503	1,503	160,000	106.45	106.45
Newport Mesa -----	1918	694	400	50,000	72.05	125.00
Oakdale -----	1909	73,450	64,000	2,233,242	30.26	34.90
Oroville-Wyandotte -----	1919	24,200	22,300	1,095,000	45.22	52.34
Owens Valley -----	1922	53,990	None	471,500	8.70	None
Palmdale -----	1918	4,756	4,698	222,500	46.78	47.36
Palo Verde -----	1923	88,693	70,000	4,174,330	47.06	59.60
Paradise -----	1916	11,260	9,836	476,000	42.27	48.39
Potter Valley -----	1924	5,042	4,195	87,000	17.25	20.70
Princeton-Codora-Glenn -----	1916	13,522	12,290	164,500	12.16	13.00
Provident -----	1918	22,805	21,000	966,000	42.30	46.00
Ramona -----	1925	660	594	91,000	137.88	153.20
Richvale -----	1930	18,020	16,900	515,000	28.60	30.00
Riverdale -----	1920	15,830	14,800	None	None	None
San Dieguito -----	1922	4,000	3,700	366,000	91.50	99.00
Santa Fe -----	1923	10,106	6,980	684,000	67.68	98.00
San Ysidro -----	1911	532	490	23,200	43.60	47.34
Scott Valley -----	1917	5,131	4,600	67,000	13.05	14.56
Serrano -----	1927	1,498	1,319	196,000	130.84	148.60
South Fork -----	1934	12,946	12,000	None	None	None
South Montebello -----	1922	827	827	63,000	76.18	76.18
South San Joaquin -----	1909	71,112	66,465	5,806,250	81.64	87.36
Stinson -----	1921	9,421	9,000	360,000	38.21	40.00
Stratford -----	1916	12,946	12,000	None	None	None
Table Mountain -----	1922	1,955	1,780	187,000	95.65	105.06
Terra Bella -----	1915	12,000	12,000	459,250	38.27	38.27
Thermalito -----	1922	3,100	2,940	320,000	102.89	108.84
Tracy-Clover -----	1922	1,034	1,000	52,170	50.45	52.17
Tranquillity -----	1918	10,750	10,190	237,000	21.12	23.25
Tulare -----	1889	34,000	30,600	None	None	None
Tule -----	1920	15,015	9,795	806,000	53.68	82.29
Turlock -----	1887	181,556	179,278	6,222,460	34.27	34.70
Vandalia -----	1923	1,275	1,253	172,200	135.00	137.43
Vista -----	1923	18,330	14,654	1,700,000	92.70	116.01
Walnut -----	1893	911	900	None	None	None
Waterford -----	1913	14,110	11,424	631,925	54.78	55.31
West Side -----	1915	11,820	11,800	510,500	43.10	43.20
West Stanislaus -----	1920	21,826	21,500	1,160,000	53.10	53.95
Williams -----	1920	9,009	8,000	565,000	62.72	70.63
Woodbridge -----	1924	14,290	14,000	280,000	19.59	20.00
Totals -----		3,407,773	2,925,895	90,877,754		
Buena Vista Water Storage D. -----	1928	72,283	46,824	942,731	12.94	21.33

RESPONDENTS' EXHIBIT "AAA"

was extracts from soil survey by the U. S. Department of Agriculture of the Lower San Joaquin Valley, California, as follows:

Madera Loams.—Utilization,—p. 72.

These soils are largely utilized for farming and rank among the best soils of the survey. In some cases they are still held in large tracts and used for grain growing and pasture. Yields of grain are good in favorable years. The land is fallowed in alternate years. The deep areas give moderate yields of fruit and other special crops without irrigation in years of abundant rainfall, but irrigation is necessary for continued good results. Irrigation, the water being supplied both by canals and by pumping from under-ground sources, has made large areas suitable for fruits, truck crops, nuts, alfalfa, and other intensive crops. The addition of organic matter materially increases yields and improves the moisture-retaining capacity of the soils.

Madera Clay Loams and Clays.—Utilization.—p. 74.

The Madera clay loam and silty clay loam, where free from alkali, are the best farming soils of the group.

Oakley and Fresno Sands, Undifferentiated.—

Utilization.—pp. 140, 141.

The soils of this group rank among the most important of the survey for intensive crops, and are highly developed where favorably located and

where water is available for irrigation. Non-saccharine sorghums, peaches, grapes, beans, melons, sunflowers, and a few minor crops are grown successfully without irrigation; but most crops give best returns with irrigation. The soils are capable of growing a wide range of cover crops, and respond readily to the incorporation of organic matter. On account of a lack of irrigation water extensive areas are still utilized for pasture or grain and hay production. The soils warm rapidly and mature crops early in the season. Watermelons, cantaloupes, casabas, and some Persian melons are grown. Heavy yields are obtained and the products are of high quality. Hoed crops are successfully grown in orchards until the trees come into bearing. Tomatoes, beans, and corn are favorite crops for this purpose. Sweet potatoes yield well where given good care.

The price of land varies greatly, depending on location, degree of development, uniformity of surface, and availability of water. It is seldom less than \$100 an acre or, where irrigated, \$150 an acre.

Oakley and Madera Sands, Undifferentiated.—

Utilization.—p. 143.

Large areas are now devoted to intensive crops such as peaches, grapes (Pl. III, fig. 1), figs, sweet potatoes (Pl. III, fig. 2), truck crops, and almonds, some of which yield well without irrigation. Alfalfa does well with irrigation, the fields lasting for several years before reseeding is necessary. The land

is irrigated by gravity from the Merced River, and considerable areas are watered by pumping from underground supplies. [805]

The foregoing Condensed Statement in Narrative Form of the Testimony and the Appendix thereto and the incorporation of Respondents' Exhibit "OO" and Petitioner's Exhibit No. 35, having been filed simultaneously, is hereby settled as being true and complete and is hereby approved and;

It Is Further Ordered that said originals of said Respondents' Exhibit "OO" and said Petitioner's Exhibit No. 35 be transferred to the Circuit Court of Appeals for the Ninth Circuit by the Clerk of this Court to be used upon the appeals herein and that the same be transported to the Circuit Court of Appeals by United States mail; and

It Is Further Ordered that the foregoing Condensed Statement in Narrative Form of the Testimony and the Appendix be likewise sent to the Circuit Court of Appeals for the Ninth Circuit as a portion of the record on appeal all subject to such orders as may be made in the Circuit Court of Appeals for the Ninth Circuit relating to the printing of the same or portions thereof and such orders as may be made in that Court.

Dated: July 13, 1939.

PAUL J. McCORMICK,
United States District Judge. [806]

STIPULATION

It is stipulated between Appellee, Merced Irrigation District, and the Appellants that this Appendix together with Respondents' Exhibit "OO" and Petitioner's Exhibit No. 35 contain a fair and true statement of the contents of all documentary evidence and exhibits introduced at the hearing herein except as herein otherwise shown; and that certain exhibits of the petitioner and of the respondents, which are hereinabove described and which were introduced in evidence at the hearing independently of Respondents' Exhibit "O" or "OO", are set forth in full or substantially in full in the Transcript of Record filed in the Supreme Court of the United States in the case of Merced Irrigation District, et al., vs. Reed J. Beekins, et al., and which case was Case No. 8165 in the Ninth Circuit Court of Appeals, and which said Transcript of Record is Respondents' Exhibit "O" for identification, introduced as Respondents' "OO" in this case; that said Respondents' [807] Exhibit "OO" shall be a part of the record on the appeals herein and that petitioner's and respondents' exhibits hereinabove mentioned shall be also a part of the record on the appeals herein as set forth in the said Respondents' Exhibit "OO", which exhibit is in the appendix and in the Condensed Statement in Narrative Form of the Testimony referred to as Respondents' Exhibit "OO", and that said petitioner's and respondents' exhibits which are set forth

therein are identified by page number in said Respondents' Exhibit "OO" as herein appears; further, that the original exhibit of Respondents' Exhibit "OO" may be transferred from the District Court to the Circuit Court of Appeals to become part of the record on appeal herein, and that the appellants will furnish several additional copies thereof for filing in said Circuit Court of Appeals in lieu of printing the same, if permitted by the Circuit Court of Appeals; further, that Petitioner's Exhibit No. 35, the so-called "Benedict Report", may be likewise transferred to the Circuit Court of Appeals and in lieu of printing the same the respondents may furnish additional printed copies, if permitted by the Circuit Court of Appeals; that the Condensed Statement in Narrative Form of the Testimony, and the Appendix, together with the two said exhibits, Respondents' Exhibit "OO" and Petitioner's Exhibit No. 35, constitute a full, true and complete record of the oral and documentary evidence introduced at the hearing herein.

It is further stipulated that the Appellee, Merced Irrigation District, expressly reserves the right to urge in the United States Circuit Court of Appeals, and in all other courts, that the United States Circuit Court of Appeals has not acquired jurisdiction of the appeal herein.

It is further stipulated that the Condensed Statement in Narrative Form of the Testimony and this Appendix, and by reference the incorporation of

Respondents' Exhibit "OO" and Petitioner's Exhibit No. 35 may be approved by the court as, and the parties [808] stipulate that they constitute a full, true and correct statement of the oral and documentary evidence introduced at the hearing herein upon the petition for confirmation of petitioner's plan of composition and to determine the status of the Reconstruction Finance Corporation as a creditor affected by the plan, showing also the proceedings had upon said hearing.

Dated: June 30, 1939.

C. RAY ROBINSON
HUGH K. LANDRAM
DOWNEY, BRAND &
SEYMOUR
STEPHEN W. DOWNEY

Attorneys for Merced Irriga-
tion District, Appellee.

CHAS. L. CHILDERS
HUGH K. McKEVITT
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PETER TUM SUDEN
BROBECK, PHLEGER &
HARRISON

W. COBURN COOK

By W. COBURN COOK

Attorneys for Appellants.

[Endorsed]: Foregoing Statement and Appendix
Filed Jul. 13, 1939. [809]

[Endorsed]: No. 9242. United States Circuit Court of Appeals for the Ninth Circuit. West Coast Life Insurance Company, a corporation, Pacific National Bank of San Francisco, a national banking association, et al., Appellants, vs. Merced Irrigation District and Reconstruction Finance Corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Filed, July 26, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In The United States Circuit Court of Appeals
for the Ninth Circuit.

No. 4818 In Bankruptcy

No. 9242

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

STIPULATION FOR RECORD ON APPEAL

It is stipulated between appellants and Merced Irrigation District, appellee, that the record on appeal in this cause shall consist of the following:

1. The original petition of the above named

debtor for the confirmation of a plan of composition, except Exhibit C and D, and in lieu of Exhibit C and D, stipulation dated May 29, 1939 with reference thereto.

2. Stipulation relating to order approving petition and notice of hearing dated May 12, 1939.

3. Answer of Mary E. Morris.

4. Answer of West Coast Life Insurance Company.

5. Answer of Milo W. Bekins, et al.

6. Stipulation relating to answer of Florence Moore, et al.

7. Proof of claim of Reconstruction Finance Corporation.

8. Proof of claim of appellants West Coast Life Insurance Company, Mary E. Morris, R. D. Crowell, and Belle Crowell.

9. Stipulation (relating to inclusion of claims in answers).

10. All orders made upon motions made in the above entitled cause and all exceptions to any and all such orders.

11. Stipulation and order (relating to F.F.G. Harper and W. S. Jewell).

12. All other stipulations made and filed.

13. Notice to Reconstruction Finance Corporation.

14. Order extending time to file objections.

15. Proposed modification of plan.

16. Conclusions of the court.

17. Findings made by the court.
18. Minute Order of January 10, 1939.
19. Objections to proposed findings of fact and conclusions of law.
20. Respondents' proposed additional findings to petitioner's findings of fact and conclusions of law.
21. Interlocutory Decree or Judgment made in said cause concerning the petitioner's plan.
22. Notice of entry of judgment or decree.
23. Notice of motion for new trial and order thereon.
24. Motion for new trial.
25. Affidavits in support of motion for new trial by Lucius F. Chase, N. Walter Strange, and John V. Murphey.
26. Affidavits in opposition to motion for new trial by E. Charles Lombard, H. P. Sargent, and E. E. Neel.
27. Petition for and order allowing appeal and fixing bond.
28. Assignment of errors.
29. Bond on appeal.
30. Citation on appeal with proof of service thereof.
31. Notice of appeal to the Circuit Court of Appeals under rule 73(a), with clerk's docket entry showing service thereof.
32. Order fixing bond on appeal.
33. Praecipe for transcript.
34. Appellee's praecipe for transcript.

35. Designation of the contents of record on appeal.

36. Statement of points.

37. Stipulations and orders extending time to docket appeal.

38. Condensed statement in narrative form of the testimony and stipulation relating thereto.

39. Appendix to condensed statement in narrative form of the testimony with stipulation and order of the court relating thereto.

40. Order denying motion for new trial.

41. All minute orders.

42. Certified copy of Resolution of Board of Directors of Merced Irrigation District Consenting to the Plan of Composition; certified copy of Resolution of Intention to Adopt Resolution; Affidavit of Publication of Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution; and Affidavit of Posting Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution, filed herein February 13, 1939.

43. Proposed findings of fact and conclusions of law.

44. Exhibits numbered Respondents' Exhibit "OO" and Petitioner's Exhibit 35.

45. Clerk's certificate of record.

46. This stipulation.

It is further stipulated that the Appellee, Merced Irrigation District, expressly reserves the right to urge in the United States Circuit Court of Appeals,

and in all other courts, that the United States Circuit Court of Appeals has not acquired jurisdiction of the appeal herein.

C. RAY ROBINSON

HUGH K. LANDRAM

DOWNEY, BRAND &

SEYMOUR

STEPHEN W. DOWNEY,

Attorneys for Merced Irriga-
tion District, Appellee.

CHAS. L. CHILDERS

HUGH K. McKEVITT

CLARK, NICHOLS & ELTSE

CHASE, BARNES & CHASE

DAVID FREIDENRICH

PETER TUM SUDEN

BROBECK, PHLEGER &

HARRISON

W. COBURN COOK

By W. COBURN COOK,

Attorneys for Appellants.

[Endorsed]: Re-filed July 26, 1939.

In The United States Circuit Court of Appeals
for the Ninth Circuit.

No. 9242

No. 4818 In Bankruptcy

In the Matter of

MERCED IRRIGATION DISTRICT,

Debtor.

DESIGNATION OF RECORD FOR PRINTING

The appellants designate the following as those parts of the record as necessary for the consideration of the points upon which the appellants intend to rely in this appeal and for printing, to-wit:

All those parts of the transcript for record on appeal mentioned in the "Stipulation for Record on Appeal" herein, and also the said stipulation, and also stipulations and orders relating to extensions of time to docket the appeal, and also Financial Statement of 1931, omitted from Respondents' Exhibit "X", provided however that Respondents' Exhibit "OO" and Petitioner's Exhibit 35 shall not be printed, but the same are necessary for consideration of the points upon which the appellants intend to rely in this appeal. Provided further that such parts of minute orders as may be hereafter designated by stipulation shall likewise be omitted.

Dated: July 21, 1939.

CHAS. L. CHILDERS
HUGH K. McKEVITT
CLARK, NICHOLS & ELTSE
CHASE, BARNES & CHASE
DAVID FREIDENRICH
PETER TUM SUDEN
BROBECK, PHLEGER &
HARRISON

W. COBURN COOK

By W. COBURN COOK,
Attorney for Appellants.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON
ON APPEAL.

The appellants state that they intend to rely upon the points mentioned in the Statement of Points and Assignment of Errors in the record herein, on the appeal herein.

Dated: July 21, 1939.

CHAS. L. CHILDERS
HUGH K. McKEVITT
CLARK, NICHOLS & ELTSE
CHASE, BARNES & CHASE
DAVID FREIDENRICH
PETER TUM SUDEN
BROBECK, PHLEGER &
HARRISON

W. COBURN COOK

By W. COBURN COOK,
Attorneys for Appellants.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Stanislaus—ss.

J. Alfred Swenson, being first duly sworn, says:

That he is a citizen of the United States, residing in the City of Turlock, California, in the County of Stanislaus, where the mailing hereafter referred to took place; that he is over the age of eighteen years and not a party to the above entitled cause; that on the 22nd day of July, 1939, he deposited in the United States Post Office at Turlock, California, a true copy of the Designation of Record for Printing and Statement of Points relied upon on Appeal, the original of which are hereunto affixed, enclosed in a sealed envelope with postage thereon fully prepaid and addressed to: C. Ray Robinson, and Hugh K. Landram, Attorneys at Law, Bank of America Bldg., Merced, California; and another to Downey, Brand & Seymour, Attorneys at Law, Capital National Bank Bldg., Sacramento, California, and another to Reconstruction Finance Corporation, Washington, D. C.; that there is a regular daily communication by mail between the place of mailing and the place so addressed.

J. ALFRED SWENSON

Subscribed and sworn to before me this 22nd day of July, 1939.

[Seal]

GILBERT MOODY,

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Re-filed July 26, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT

State of California,
County of Stanislaus—ss.

W. Coburn Cook, being first duly sworn, says:

That he is one of counsel for the appellants in this cause; that he has had charge of the preparation of the record on appeal and that the record on appeal is now substantially completed and will be ready for docketing in this court in a very few days; that there has been prepared a condensed statement in narrative form of the testimony which embraces all of the oral testimony. There has also been prepared an appendix thereto in which is set forth in full or in summarized form, the documentary evidence introduced at the hearing. It is proposed to print the appendix in a separate volume, and it is desirable and would be convenient for the court if the printer be permitted to insert in the condensed statement the page numbers at which the exhibits in the appendix appear in their printed form. An application is therefore made for an order permitting this to be done.

W. COBURN COOK.

Subscribed and sworn to before me this 8th day of July, 1939.

[Seal]

J. ALFRED SWENSON,

Notary Public in and for the County of Stanislaus,
State of California.

[Title of Circuit Court of Appeals and Cause.]

ORDER

Good cause appearing therefor It Is Ordered that upon the appeal in this cause the Clerk of this court cause the printer printing the record on appeal to enter in that part of the printed record which contains the condensed statement in narrative form of the testimony page references to the page in the printed appendix to condensed statement in narrative form of the testimony at which the various exhibits appear in such appendix, and further that the said appendix may be printed in a separate volume.

Dated:

FRANCIS A. GARRECHT,
Judge, United States Circuit
Court of Appeals.

[Endorsed]: Re-filed July 26, 1939. Paul P. O'Brien, Clerk.

At a Stated Term, to wit: The October Term A. D. 193....., of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the thirty-first day of July in the year of our Lord one thousand nine hundred and thirty-nine.

Present:

Honorable William Denman, Circuit Judge, Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable William Healy, Circuit Judge.

[Title of Circuit Court of Appeals and Cause.]

ORDER RE PRINTING

Upon stipulation of the parties appearing in the certified transcript of record herein and oral application of W. Coburn Cook, counsel for appellants, and good cause therefor appearing, It Is Ordered that upon the filing of four copies of respondent's exhibit "OO" and ten copies of petitioner's exhibit 35, printing therefor for the purpose of consideration of the appeal herein may be omitted and the same may be considered as part of the record on appeal herein the same as though they had been printed.

